(22,106.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 505.

SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE, PLAINTIFF IN ERROR,

vs.

ANNIE SNYDER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 15, 1910.

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1—5 At a regular term of the Chancery Court begun and held at the Court House in the City of Chattanooga, said County and State on the Third Monday, that being the fifteenth day of March, A. D. 1909, present and presiding the Hon. T. M. McConnell, Chancellor, in and for the Third Chancery Division of said State, the following proceedings were had, viz:

Style of Suit.

No. 11317.

Mrs. ANNIE SNYDER
vs.
SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE.

Prosecution Bond.

Filed August 17th, 1908.

We hereby acknowledge and bind ourselves security for the payments of all costs that may be adjudged against the complainant in this suit. This the 17th day of August, 1908.

PRITCHARD & SIZER.

6 *Original Bill.*

Filed August 17th, 1908.

Mrs. ANNIE SNYDER, a Widow, a Resident of Hamilton County, Tennessee,

vs.

THE SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE, a Corporation Chartered and Organized under the Laws of the State of Pennsylvania, with its Principal Office and Place of Business in the City of Philadelphia, Pennsylvania, but with an Office and Local Agent in Hamilton County, Tennessee.

To the Honorable T. M. McConnell, Chancellor, holding the Chancery Court at Chattanooga, Tennessee:

Complainant respectfully shows unto your Honor:

I.

That the defendant is a benevolent association, incorported as aforesaid, and that it has various dubordinate agencies located in the different States of the Union, and among others, one or more in the City of Chattanooga, Tennessee. As one feature of its business,

said defendant issues certificates or policies of insurance to such of its members as desire them, on compliance by such members with certain conditions and requirements.

II.

Complainant further shows that on the 23rd day of November, 1887, the said defendant issued to Chas. C. Snyder, who was then the husband of complainant, a policy of Benefit Fund certificate #2705, whereby, on certain conditions and considerations therein set forth, it agreed and bound itself at the death of said Chas. C. Snyder, and upon satisfactory evidence of his death, to pay to complainant, or in case of her prior death, to his children, a sum not exceeding Three Thousand Dollars (3000.00) out of its benefit fund. Said Benefit Fund Certificate is herewith filed and marked Exhibit "A" and complainant prays that it be taken and treated as part of this bill but not for copy.

III.

Many years after the issuance of said Benefit Fund Certificate complainant applied to this Honorable Court for a divorce
7 from her husband, the said Chas. C. Snyder, which was duly granted her, with the custody and control of the four children of herself and the said Snyder; after she had obtained the said divorce, to-wit: on or about the 25th day of June, 1904, complainant wrote defendant advising defendant that she had obtained said divorce and also that she had for ten years past kept up the assessments on the said certificate, and inquiring to whom the money on said certificate would be paid, under the conditions stated, in the event of the death of the said Chas. C. Snyder. To this letter complainant received a reply, signed by the Supreme Mystic Ruler of the defendant, who is defendant's highest officer and representative, stating in substance that unless the said Snyder changed the beneficiary named in the certificate, as he had the right to do within certain limitations and conditions, the amount of said certificate would, on the death of said Snyder, be payable to complainant, provided the assessments were kept up, and in the event of complainant's death to his children. Said letter further suggested that although the said Snyder had the right to change the beneficiary named in the certificate, it might be difficult for him to do so if complainant retained the certificate; and at complainant's request, defendant further agreed through its said Supreme Mystic Ruler, to make arrangements whereby complainant might be notified of any application which might be made for change of the beneficiary of the said certificate. On the strength of and in reliance on the aforesaid representations and statements of the defendant, complainant continued, at great sacrifice to herself and her children, to pay all assessments, dues and charges on said certificate up to the death of the said Chas. C. Snyder; and she avers that no change was made in the beneficiary named in said certificate, and that the said Snyder and the complainant for him and on his behalf, with the knowledge and consent of the defendant, complied with the laws, rules and

regulations applying to the said certificate, and that the said Snyder was a member of the defendant corporation in good standing at the time of his death.

8 IV.

On or about the first day of May, 1908, the said Chas. C. Snyder died; and complainant promptly gave notice of his death to the defendant, and furnished defendant with full and satisfactory evidence of his death, and demanded payment of the amount provided for in said certificate, in accordance with the terms and provisions thereof; but defendant has wrongfully failed and refused to pay said amount or any part thereof.

V.

Complainant further avers and charges that the refusal of the defendant to pay the amount due her as aforesaid was not in good faith and that such failure has inflicted additional loss, expense and injury upon complainant, as the owner and holder of said certificate that defendant has refused to pay said amount for more than sixty days after demand was made by complainant, as the holder of said policy, for payment of the same; and that she is entitled to recover such additional loss, expense and injury in addition to the principal amount provided and stipulated for in said policy or certificate and interest thereon.

The premises considered, complainant prays that the defendant named in the caption be made such by due and legal service of process on its local agent and representative in Hamilton County, Tennessee, and required to answer to this bill; that complainant have a decree against said defendant for the said sum of Three Thousand Dollars, and interest thereon from the date of the death of the said Chas. C. Snyder, and such additional sum as will compensate her for the additional loss, expense and injury inflicted upon and suffered by her by reason of defendant's wrongful refusal to pay said policy; and she prays for general relief.

PRITCHARD & SIZER,
Solicitor- for Complainant.

9 STATE OF TENNESSEE,
Hamilton County:

Mrs. Annie Snyder, the within named complainant, being duly sworn, deposes and says that the statements in the foregoing bill where made as of her own knowledge are true and those made as on information and belief she believes to be true.

ANNIE SNYDER.

Sworn to and subscribed before me this 17th day of August, 1908.

S. BARTOW STRANG,
Notary Public.

[SEAL.]

EXHIBIT A TO ORIGINAL BILL.

Filed August 17th, 1908.

Supœna to Answer.

Issued August 17th, 1908.

Subpœna to answer issued to the Sheriff of Hamilton County for the defendant and returned with the following endorsement thereon:

Came to hand August 17th, 1908. Executed by reading and making known the contents of the within writ to W. G. M. Thomas, Ruler of the local Lodge of the Supreme Ruling of the Fraternal Mystic Circle, he being the highest officer of said Mystic Circle to be found in my County and summoning him as herein commanded; I gave a copy of the bill to W. G. M. Thomas this the 19th day of August, 1908.

J. G. RICHARDSON, *D. S.*

Answer of Defendant.

Filed September 12th, 1908.

In answer to Complainant's bill in the above styled cause, the Defendant respectfully shows unto your Honor.

I.

It admits paragraph one of the charges of the bill.

II.

It admits paragraph two of the statements of the bill, except as hereinafter set forth and explained. It agreed, secondarily to pay as averred, in paragraph two, not to the children of Chas. C. Snyder, but to the Guardian of said Children. The full contract is set forth as Exhibit "A" of the original bill except as the same may be explained, modified or controlled by the laws of the Defendant as will be more fully hereinafter set forth. It admits that the benefit fund certificate filed with the bill and marked exhibit "A" is correct.

III.

It admits the fact averred that complainant obtained a divorce from C. C. Snyder. It admits the terms of the divorce and the custody of the children as averred. It does not know whether she paid the assessments on said certificates for ten years past and treats that as immaterial but if deemed material by complainant, it requires proof.

11 IV.

It admits that she wrote a letter but addressed it to the Supreme Ruler, Mystic Circle, Philadelphia, Pa., about the time stated, viz;

June 25th, 1904, advising that she had obtained a divorce from the said C. C. Snyder.

V.

This letter is what is manifestly meant by complainant's averment of what she wrote advising the defendant, and is all there was on the question of that writing and advisement. The letter was received and is here filed as Exhibit "A" to this answer. What is contained in said letter of past payments of assessments or time of payment is assessment is immaterial. The receipt of it is hereby admitted and the letter filed for all it speaks and for all it is worth in law and in fact. This letter was replied to, as averred, by the Supreme Mystic Ruler of the defendant, who is its highest Officer and representative. The reply states practically as averred. The reply will be produced in proof and its actual contents and construction be submitted to the judgment of the Court. As will also be submitted later, in this connection copies of the entire correspondence between the parties.

VI.

The defendant does not admit the construction, as averred, in the statement of complainant as to what was involved in this correspondence but will submit all that for consideration and construction by the Court. The answer to this letter was made by the Supreme Mystic Ruler and defendant admits that it was said in substance in said letter that unless the said Snyder changed the beneficiary named in the certificate, as he had the right to do, with certain limitations and conditions, the amount of said certificate would, on the death of said Snyder, be payable to the Complainant, provided the assessments were kept up, and said Mystic Ruler in said letter, advised that the said Snyder might change the beneficiary of said certificate, advising her, the now complainant, that the proper authorities of the defendant should be notified that such a change might be at-
12 tempted. At the time of this reply the Mystic Ruler was forgetful of the fact that under the laws of the order which governs the payment of benefit certificates, a divorced wife could not under any circumstances be a beneficiary and he wrote her said letter in such forgetfulness of fact. In writing this letter to Mrs. Snyder (the present complainant), The Supreme Mystic Ruler overlooked this provision, which had for many years been a part of the laws of the Order, which controlled the contract between itself and C. C. Snyder and inadvertently stated to her that she could, on payment of assessments, be the beneficiary. That part of the laws of the order which he overlooked in this reply is contained in Section 14 of Law I Supreme Ruling Laws, Page 37, (1907 edition) and which law had been in force at the time C. C. Snyder became a member and at the time this letter was written to Mrs. Snyder and was in force at the time of C. C. Snyder's Death.

It is as follows:

"If at the time of the death of a member who has designated as beneficiary a person of Class 2, the dependency required by the laws of the order shall have ceased, or should be found not to have existed,

or if the designated beneficiary is a husband or wife and they should be divorced on the application of either party, or if the designated benficiary is an affianced husband or affianced wife and their engagement ceases before marriage, if any designation shall fail for illegality or otherwise, then the benefits shall be payable to the person or persons mentioned in class 1st, Section Law I, if living, in the shares and order of precedence by grades as herein enumerated etc."

The person or persons mentioned in Class referred to was other than a dovorced husband and complainant is not embraced and included therein. This provision appears in Exhibit "B" here filed and is on page 37, of said exhibit.

VII.

As already stated, overlooking this provision of the laws of the order, which was a part of the contract of said C. C. Snyder, and
13 which existed when said contract was made and before made, and preserved through later laws of the order, and by which said Snyder was bound and his beneficiary was bound, and had been continued and was existing at the time of the writing of this letter, and which*m* no one was authorized to waive, and expecially the said Mystic Ruler was not authorized to waive, and which existed at the time of the death of said Snyder and still exists, as a part of the laws of the order, governing all members and beneficiaries, the Mystic Ruler did inadvertently advise her that by paying assessments and dues she might be entitled to the benefits of said certificates on the death of said C. C. Snyder. That she was not in fact so, not only appears from said*f* laws, but from the agreement to be bound thereby in the application for membership of the said C. C. Snyder, herewith filed as Exhibit "C" to this answer.

VIII.

But this was a mistake on his part and one which did not and could not bind the order against itself, and its laws, which *from* a part of the contract of every member. It is no estoppel in any sense of law or fact, but if an estoppel at all, it could only be such as against the claim which the defendant might have against defendant for all dues and assessments, which she might have thereafter paid with interest thereon.

IX.

It is not known how much dues or assessments she might have paid but this is not material in fact or in law, but defendant is advised that *hse* has since the receipt of the letter aforesaid of said Defendant's Mystic Ruler, paid in the way of dues and assessments (Not all of which reached the Supreme Ruling of the Fraternal Mystic Circle), but through the subordinate rulings for such purposes, several amounts on assessments, and dues, which in the aggregate and with interest to this date, amount to the sum of $221.83 as calculated from the best available information the defendant has, and to this ex

tent only could the erroneous letter of Defendant's Mystic
14 Ruler, have operated to deprive complainant of anything to which she is entitled and defendant hereby tenders to complainant this amount in satisfaction of her claim on this point, and of its liability to her in any aspect. The said sum of $221.83 is tendered in legal currency of the Government of the United States, and defendant brings said amount into Court and tenders it into Court in satisfaction thereof, and asks that she now accept it, and also that it be held in Court if she declines to accept it to be turned over to her in full satisfaction of her claim and covering any loss of any claim of having been mislead by the momentarily forgetful and erroneous leetter by which defendant is not in any way or in any respect bound. The defendant admits that no change was made in the way of beneficiary in the said certificate, but in point of fact the said Snyder, upon his death and during the existence of his connection with the defendant order did remarry and did take to himself another wife, who might have become the beneficiary. This is a question of law which the defendant submits to the judgment of the Court. It admits that at the time of the death of said Snyder he was a member of the defendant order in good standing.

X.

Defendant admits that the said C. C. Snyder died as averred and that the complainant notified defendant of his death promptly and furnished defendant evidence of his death and admits refusal of payment of the policy or beneficial certificate, but it avers and says that it had information and evidence that at the time of the death of said Snyder, his health had become imparied by the use of narcotics, alcoholic, vinous and malt liquors and that under the contract made between said Snyder and this defendant, by which said Snyder became a member of this order that this relieved the defendant from any responsibility and payment was therefore refused.

One of the provisions of the application of C. C. Snyder for membership in the Circle and upon which be became a member and upon which membership he could claim on his death liability against the defendant is as follows:

15 "I further agree that this order shall not be responsible under this contract if my health shall become impaired by the use of any narcotics, or alcoholic, vinous or malt liquors."

The defendant avers that the health of said Snyder had become before his death and after making the said application and agreement and at the time of his death impaired, by the use of narcotics, alcoholics and vinous and malt liquors and that therefore the responsibility of this defendant to the said Snyder or to his beneficiary, the complainant, if she be the beneficiary, had ceased and determined, and that this defendant is not liable to the said beneficiary on account of his said death by reason of said provision in said application agreement and contract. The defendant further avers that by reason of Section I of Law 8 found on page 77 of the Constitution and laws of the Supreme Ruling of the defendant, which was in existence at the time of his contract and at the time of his death

and which binds the complainant and defendant as a part of his contract, that the complainant is not entitled to any recovery on account of his death. So much of that law as is applicable to the present controversy under which recovery is sought is as follows:

"No benefit shall be paid on account of any death, permanent or temporary disability of any member—if member's health shall become impaired or death result directly or indirectly from the use of opiates, cocain, chloral or other narcotics, poisons, or alcoholic or vinous or malt liquors; or in case at the time of death, the member shall be addicted to the use of alcoholic or vinous malt liquors and upon this question the Supreme Medical Examiner's decision shall be binding and conclusive." * * *

This provision appears as stated on page 77 of Exhibit "B" hereto.

And defendant avers that said C. C. Snyder and any beneficiary was bound and concluded by said contract according to said provision.

And it avers that on application by complainant for payment the Medical Examiner did decide such question against complainant and that such decision is binding and conclusive.

16 And it avers that the health of said C. C. Snyder did become impaired and that his death did result directly or indirectly from the use of opiates, cocain, chloral and other or other narcotic poisons and alcoholic and vinous and malt liquors one or all separately or in connection with other drugs and narcotic- enumerated and included in the specifications aforesaid. And therefore defendant says it is not liable for said benefit certificate or complainant or otherwise or in any event liable.

Everything in the bill not heretofore answered, admitted or explained is denied.

And having fully answered it asks to be discharged of liability and go hence with its reasonable costs.

SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE,
By T. C. LATIMORE, *Sol.*
D. L. SNODGRASS,
T. C. LATIMORE,
Sol's for Def'ts.

EXHIBIT "A" TO ANSWER.

Filed September 12th, 1908.

CHATTANOOGA, TENNESSEE, *June* 25, 1904.

Supreme Recorder Fraternal Mystic Circle, Philadelphia, Pa.

DEAR SIR: I am the holder and am named as beneficiary of Policy No. 2705 on Chas. C. Snyder's life in the Fraternal Mystic Circle. I have kept up the assessments for the past ten years.

I have sued for divorce from Chas. C. Snyder and the Court granted it. I have four sons which the Court gave me complete control of when divorce was granted. Please inform me to whom this money would be paid in the event of Mr. Snyder's death.

Respectfully,

ANNIE SNYDER.

EXHIBIT "B" TO ANSWER OF DEFENDANT.

Filed September 12th, 1909.

(Original Exhibit in Separate Package.)

17 *Deposition of Mrs. Ida F. Snyder.*

Filed January 14th, 1909.

Deposition of Mrs. Ida F. Snyder, Taken, by Consent of the Parties at Washington, D. C., on January 11th, 1909, in the Presence of Pritchard Sizer, Esq., Sol. for Complainant, and T. C. Latimore, Esq., Solicitor for Defendant.

Mrs. SNYDER testifying in behalf of the defendant and being duly sworn deposed as follows:

Direct examination of Mr. LATIMORE:

Q. Mrs. Snyder will you please state your name and residence?
A. My present residence you mean? I am living in Washington, D. C.
Q. How long have you lived in Washington?
A. I just recently came here; about a month ago.
Q. Where did you live prior to your coming to Washington?
A. I lived at Wallesboro, Pa., Elmira, N. Y., and Reading, Pa.
Q. Did you at one time live in New York, and if so, what period?
A. Not in New York, but in Brooklyn.
Q. During what period?
A. From July 1st, 1904—I don't know when I left there. I left there in 1908, I can't—I think in May or June; I think about the last of June 1908. I cannot state positively.
Q. 1907 you mean?
A. No, 1908. I left Mr. Snyder in 1907, but still remained in Brooklyn for a year and three or four months.
Q. I suppose the time you refer to as being in Pennsylvania after leaving Brooklyn, you were visiting?
A. Yes sir.
Q. Were you visiting friends or relatives?
A. Both.
Q. Were you acquainted with Chas. C. Snyder, who died at 662 Nostron Avenue. About May 1st, 1908, and who formerly lived in Chattanooga, Tennessee?
18 A. Yes sir.
Q. Where did you first make the acquaintance with Mr. Snyder?
A. Here in Washington, where we both boarded on K Street, the number of the house, I don't remember.
Q. You were living in Washington at that time?
A. I was.

Q. Was he living there at that time?
A. He was.
Q. Were you engaged in any occupation then?
A. I was.
Q. Please state what it was?
A. I was a Clerk in the Patent office.
Q. About when was it that you first got acquainted with Mr. Snyder?
A. Well, I have no idea. It was in 1903, but it would be impossible for me to say when. I have no idea.
Q. Were you later married to him?
A. Yes sir.
Q. What was the date of your marriage?
A. July 1st, 1904.
Q. Where were you married?
A. In Brooklyn, N. Y.
Q. Who performed the Marriage Cer-mony?
A. Rev. Dr. Lacy, of the Church of the Redeemer.
Q. Please examine the certificate made by him of your marriage (handing papers to witness) and state if this is the same one who married you and Mr. C. C. Snyder, or performed the ceremony, and, if so, file that paper as Exhibit "A" to your deposition?
A. Yes sir, it is correct.

Certificate signed —— Lacy offered in evidence, marked Exhibit "A" and attached hereto.

Q. After your marriage to Mr. Snyder, where did you and he live?
19 A. We first lived on Schermerhorn Street, but the number was something that I could not remember in my life, I cannot tell the number, but it was on Schermerhorn St. or Avenue not far from the Church where we married. We lived at several places.
Q. During the time that you lived together, did you live in the Burrough of Brooklyn, N. Y.
A. Yes sir.
Q. How long did you continue to live with Mr. Snyder?
A. From July 1st, 1904, to February 9th, 1907.
Q. During the time you were living together, did you keep house or board?
A. Kept house.
Q. Did he spend much time or little with you at the place where you lived at Brookland?
A. Yes, he was there a good share of time, for about a year at least.
Q. Was or was not Mr. Snyder in the habit of using any kind of opiates or narcotics?
A. He was.
Q. State when and how you first learned this fact?
A. The first time I ever knew he took anything was before we were married, but I had no idea, of course, of his taking it contin--ously. He called with me on a nephew of mine, and while there

he took a little box out of his pocket and took a tablet of some kind. After he went out I asked him what he took; He said a morphine tablet. I said what are you taking that for? He said, I had a very severe toothache, and I didn't want that to mar our visit, and took it to relieve the pain. I said I hope you don't take them as a general thing, or follow it up. He said, "Oh my, If I took them regularly, dont you think that you are the last person that I would allow see me take them? And then after I came back to
20 Washington, I wrote him about it again; it worried me and he then explained it in the same way, and said I need not be afraid of that, he would not take too much of it. I discovered very soon after we were married that he was taking regularly, every day, and not only once but two or three times a day. For some time I said nothing, because I knew it would only cause him to become angry, because he was not himself anyway, and for some time I said nothing. He would get up in the morning, some time 9 or 10, or even 11 or 12 o'clock, he would often lie in bed till 12 o'clock, then take his paper and go to his large chair, and it would not be more than a few moments before his head would drop over, and he would be asleep, after getting out of bed a few moments before. He would, always, after getting up, go to the bath room and take a glass of water, as I imagined and knew from the facts I learned later. Then when I would come into the room and find him nodding, he would rouse up and brace up as though he did not want me to notice it. And I said, Charlie it is strange that you are so sleepy after just getting up out of bed. He would say, what are you watching me so closely for? I said nothing at all. He knew that I knew that he was using morphine, but I said nothing at that time.

Then when he got out of the drug, and did not have it, he raved and tore in a way that was dreadful, and would threaten to kill himself and me. I came near running out of the house one time. I was afraid of him. He tore his hair and fell on the couch, and went on. I said don't you know the people down stairs will hear you What will they think? He got up and went out and I suppose got some more, and when he came back he was more quiet.

Q. Did he or not continue to use this narcotic or drug throughout the time you lived together as husband and wife?

A. He certainly did, and increased the dose every day. He had a cocain bottle or vessel, and got a hyposermic syringe. He told me he was going to do that. He threatened to kill several times.
21 Q. State whether or not you ever saw any bills which you saw that he had received for drugs or narcotics, what the drugs were, their quantities and the amount of the bills?

A. I did. I don't know that I can tell—I had a copy of them. I found them on the floor one morning; they fell out of one of his pockets one morning. The bill was for 500 grains ½ grain morphia and 500 grains ¼ grain morphia.

Q. Did you or did you not ever see about the house, and if so in what places, *in* evidence of morphine which he had been handling?

A. Yes sir. I saw tablets on the parlor floor, opposite his chair;

also beside the couch on the bed-room floor and on the floor of the bath-room.

Q. Did you see these things often?

A. I saw them often, and besides that, he had some locked up in his trunk.

Q. How did you know that he had them locked up in his trunk?

A. Because he told me, and saw him take them out one time.

Q. Now what kind of drugs did you see him use at different times?

A. All that I ever saw him use was Morphine and Cocaine.

Q. Did he use both morphine and cocaine?

A. Yes sir.

Q. Did he not use them daily?

A. Yes sir.

Q. State what, if anything, he ever said to you about procuring the business card of a physician for him?

A. I was in Elmira, N. Y. visiting a physician's house. He wrote while there for me to bring with me some cards with that Doctor's name—Dr. W. S. Fischer—He wrote me to get some of Doctor Fisher's business cards, also those of other physicians. I wrote him and asked him what he wanted with the doctor's card. He said, never mind, I want them and you bring them to me, and don't forget. Of course, I knew what he wanted, and I did not bring them. The first thing when I got back he asked me, have you brought those cards? I said no, he said, why didn't you? I said, because you did not need them, and because I was not going to ask my
22 friends or any physicians for their cards. His excuse was that I could tell them I would hand them to any sickly looking people I met. Of course I did not get them. He was very angry because I did not bring them.

Q. Did or did not Mr. Snyder try to conceal the fact that he was using opiates from you? and if so, tell all you know about his efforts to conceal the use of these opiates.

A. I at least told him that he was taking this drug, and taking entirely to- much of it. In fact, he needed none whatever. Of course he called me a liar; said it was not true. He said since you have told me that, I have had a reputable physician examine me every day. I said it does not matter *now* many physicians you have to examine you. I know you have had none. You take it, and nothing can make me believe you do not. I know what I know. Then he said he would kill me, if it was right in Court, if I ever told any one that he took morphine; I said you can kill me now if you want to. You have ruined my life.

Q. Did or did not Mr. Snyder drink whiskey during the time you lived together?

A. He used it somewhat, but I don't think he used whiskey to excess, although he may have been under the influence of it at times when I did not know it. Towards the last he went out every night, and came in with his breath smelling. Whether he took much or not, I do not know.

Q. What, if anything, did he say to you had been his habits as to the use of whiskey before he married you?

A. He said, he had been a drunkard and had drunk all his life. That he had spent many thousands of dollars in drink, but he did not propose to do it any more.

Q. State what effect, if any, you noticed this drug had upon his temper, when he was under the influence of opium?

A. When he was under its influence, he was very quiet; that quieted him. When the effects had worn off, then became desperate and almost wild until he got it again. He would rave about the house like a madman. He said he was going to kill me and
23 kill himself, and would make an end of both of us. I said al- right, the sooner the better. I won't run.

Q. State what effect, If any, you noticed that the use of this drug had upon his health?

A. Why, it simply took all ambition out of him. He would not work, he would not get up in the morning, he had no ambition and no desire to do anything but to be under the influence of the drug continually. He did not want to eat anything for a time. He ate very little. In the morning nothing. He began to get thin.

Q. Was or was not his health injured by the use of——

Mr. SIZER: Wait a minute. I want to except to the last question, because the witness has already testified as to the effect of the alleged taking of drugs on the health of the deceased, and she has not qualified herself to express an opinion on a medical proposition like that embraced in the question.

Q. Just describe in a general way how his health was effected?

A. It made him very, very, nervous indeed.

Q. The use of these drugs?

A. And it unnerved him for work of any kind. He simply lay around the house all day and most of the days. Then he went out at night, when he did go out.

Q. How did his physical condition, his health, when you separated from him on February 7th, 1907, compared with what it was when you married him, July 1st, 1904?

A. Well, he was very much more nervous. His nervous system was completely shattered, and his appetite was very much reduced. He had very little compared with what he had when we first married, and he was getting much thinner. He spoke of that himself, that he was getting thin.

Q. What was the cause of your separation from Mr. Snyder?

A. Cruel treatment and non-support.

Q. Did or did not the fact that he used these narcotics have anything to do with your separation?

A. It certainly did. I could not live with a morphine fiend. I did not care to have anyone tell me he was going to kill me two or three times a day.

24 Q. Did you or did you not see any pistol that he kept about the house?

A. I did.

Q. Where did he keep it, and for what purpose did he say he kept it?

A. He said he was going to have himself prepared for anyone who might break in. He also had a long sharp knife on the other side of *side of* the bed.

Q. What was his conduct towards others who came to the house, or your resident*s* to see him, when he was free from the effects of this drug?

A. Well, he was very nervous and irritable, but he would try to treat them politely, so much so that he would remark I believe that man's mind is effected—the neighbors and people around. They would say, I believe Mr. Snyder is crazy.

Q. Did or did not Mr. Snyder say that he desired to change the beneficiary of the policy held by him in the defendant Company.

A. He certainly did.

Mr. LATIMORE, Q. Well I believe that is all.

Cross-examination by Mr. SIZER:

X. Did you ever get a divorce from Mr. Snyder?

A. No, I never did.

X. Have you asserted any claim to the policy in suit in this case, against the Fraternal Mystic Circle? with respect to any claim you may have to the policy?

A. None whatever.

X. Have you any attorney representing you with reference to any claim you may have to the policy?

A. No sir.

X. You say that you lived with Mr. Snyder from July 1st, 1904, to February 9th 1907?

A. That is what I said.

X. And for about a year of that time he stayed at home a good share of the time?

A. Yes, I meant in the evenings when I made that remark,
25 evenings mostly, as well as part of the day at times.

X. That was the first year after your marriage, that he spent the evenings and part of the day at home?

A. Yes, that was before he began to take this drug to such an extent that I knew it. Before he got so sleepy that he did not know whether he was riding or walking.

X. All I asked you was whether it was the first year after your marriage that he spent the evenings at home?

A. Yes sir.

X. And after about the first year, he was at home very little, as I understand you?

A. He was not at home so much evenings as he was day time then.

X. Mr. Snyder was very secretive about taking this drug I suppose?

A. He tried to be but he was found out all the same.

X. And he denied to you that he was taking it?

A. He denied it to me.

X. Whenever he would take it he would go into the bathroom, away from your presence, and you would know from the effect when he came down that he had been taking it?

A. I saw him put it in his mouth on several occasions.

X. He would take it when he thought you were not looking?

A. Yes, when he did not see that I was looking, of course, when I caught him taking it. He would not take it when he thought I was looking. He was cunning enough for that.

X. And, his object was always, to take it when he thought you were not present, so you would not know?

A. I don't know.

X. Well, he did try to deceive you and keep you from knwoing how much he was taking, did he not?

A. I have already said that.

X. As a general rule, the way you knew he was taking it was that he would apparently be in a better condition after he would go into the bathroom and come out?

A. It did not effect him so quickly as that.

X. Well then, he would go into the bathroom, and come
26 out and after a while his condition would improve and — would conclude that he was taking morphine?

A. He would go to sleep, I knew he had.

X. You reached that conclusion from what you saw and what you saw as to his condition, and not *from* actually from seeing him taking it?

A. We know things without seeing them.

X. Please answer the question?

A. I said I did.

X. I asked you if it was not true that your knowledge of his taking this drug was derived not from seeing him take it, but from the fact that you noticed the effect on his conduct?

A. No indeed.

X. What do you mean then?

A. Because my seeing the bill where he had purchased it, and because of those cards that he wished; and because of the tablets, the ½ grain and ¼ grain Morphia tablets I saw on the floor at different places in the house, knwoing that he kept them in his trunk, because I saw him take them out, and also the effect they produced on him constantly.

X. Well now, that bill, what was the date of that?

A. I can't tell the date, I don't remember.

X. It was a bill, wasn't it, that you found among some of his old papers?

A. No, it was a bill that fell out of his pocket one evening on the floor, and he did not discover it, and I took it up and found that it was a bill for morphine. I showed it to him afterwards.

X. About how long before your separation did that occurrence take place?

A. Oh, I don't know. I think it must have been nearly a year before, I am not positive. The time I will not attempt to give.

X. About a year you think, before you separated?

A. Just as well put it that way as any. I am not sure.

X. After the first year of your married life, when he
27 stopped spending his evenings at home, you say he would stay about the house mornings?

A. In the morning, the principal part of the day, lie around asleep all the time. Of course he did not need so much sleep, and I would ask him why he did not get up and get to work, he could not hope to succeed by lying in bed.

X. Now you say you noticed one effect of his taking morphine was that he did not seem to want to work any?

A. Yes; it took his ambition entirely away. He wanted to be more comfortable, under the effects of it all the time.

X. Now, is — not a fact that he did not have much desire to work?

A. Yes, but that made still less. It was none *at* then, as you can imagine. Not wanting to work don't make a man sleepy all the time though.

X. You say you left Mr. Snyder because he did not support you, and on account of his cruel treatment?

A. Yes, and because he threatened to kill me. He could not support me.

X. In fact, you and he never lived very happily, did you?

A. Not after the first few months.

X. When he was in the house there was some sort of a quarrel or disagreement between you?

A. No, he would often swear and say, well you are the meanest quiet woman I ever knew, because I would not quarrel with him.

X. But sometimes, you did quarrel with him, did you not?

A. Yes, when I quarrelled with him about his profanity, and I would tell him I would have to leave him. I don't call that quarrelling though.

X. Well, you would reprove him about his use of morphine and things of that sort?

A. Yes, that is a wife's privilege.

X. And, he would deny using it, and you would say that he need not deny it, you knew better etc.

A. I told him that several times, yes.

28 X. You told him that right often, didn't you?

A. No, not right often.

X. Well, more than once, didn't you?

A. Well, I don't know about that.

X. You think there was only one time about your whole married life that you had that kind of a discussion?

A. I decline to answer, because I can't remember.

X. Did you know when you married Mr. Snyder about his having another wife in Chattanooga?

A. Yes, but not until we were engaged to get married.

X. Did he tell you about it?

A. Told me he had one, yes, but that he had not lived with her for eight years, and was divorced from her. I made him send and get a copy of decree of Court to prove it was so.

X. You say you were a clerk in the Patent Office at the time you married him?

A. Yes.

X. How long had you had that position?

A. I don't remember just how long; I had been in the Census Office before that.

X. How long have you been in the Government departments at Washington, without reference to any particular position, the entire period.

A. Nearly four years.

X. Had you ever been married before you married Mr. Snyder?

A. I had not.

X. I believe you say that Mr. Snyder increased the dose of morphine that he took during the time you lived with him? Is that correct?

A. I would not have stated that if it were not correct?

X. I merely want to know whether you did state it?

A. You heard me say it?

X. Now what was the size of the dose he was taking at the time you married him.

A. I can't say. I do not know, and he certainly would not tell me.

X. What was the size of the dose he was taking when you separated from him?

29 A. I don't know. I simply saw on this bill where he had purchased 500 grains of ¼ grain morphia and 5500 grains of ½ grain morphia.

X. Well, if you don't know the size of the dose he was taking when he first married you, and you don't know the size dose he was taking when you separated, how do you know he increased the dose?

A. Because he could take it two or three times a day, couldn't he or increase it by taking two or three tablets at once?

X. I am asking you how you know anything about the size of the dose he took, either when you first married him or when you separated from him, if you did not know the size of the dose, and how you are able to say he increased the dose?

A. I call it increasing it when you take three or four times a day, instead of once a day. That is what I meant by saying he increased it, and that is what I know he did.

X. You mean, then, he increased the frequency, and not the size of the dose?

A. If you wish to put it that way, yes.

X. I don't want to put it anyway, but to know the fact as it is.

A. I told you that *what is* I meant; he increased the dose to three or four times a day, instead of taking it once.

X. Well, you say something about his taking three or four tablets at once. Do you know that or is it only surmise?

A. Taking three or four at a time, I don't remember saying that? I said he might have taken three or four at a time. I don't know. I think this quite sufficient. How many he took, I don't know. As many as he wanted, I suppose.

X. How many times a day did you see him taking it when you separated from him?

A. Three times, and possibly more, because he was continually under the influence of it.

X. Well, now do you say he was taking it that often because he was under the influence of it, or because you think he took it that often and saw him take it?

A. I saw him on some occasions, and I know from the way
30 he acted that he was under the influence of it all the time.

He was not under the influence of it all the time when you first knew him?

A. He was not.

X. But he was occassionally?

A. I never knew him to take it when he was with me before we were married but this one time. I have already stated that.

X. Did it have any effect on him that time when you saw him take it?

A. I don't know. I was not with him long. He went his way and I went mine.

X. Soon after you were married, would it have any effect on him when he would take this dose?

A. That is a foolish question to ask me. We went to New York, and were working at the political headquarters at New York for a month. We would start out together, he would always tell me go on, when he was all ready. Nothing to prevent his coming out with me, but he would go back and get a drink of water first. And he would say why dont you go on? what are you waiting for. I said I am waiting for you.

X. You mean that this occurrence took place every morning for a month?

A. Yes.

X. Every morning you would got out, and he would go back and get a drink of water, and you would watch him and see him put a tablet in his mouth?

A. I did not see him every morning, but this one morning I watched him. I waited by my window to see what he was doing.

X. Then it was only a single occurrence that you are detailing here?

A. I said, I did not see him take it every morning, but I saw him go for a glass of water every morning.

X. But you did not notice any effect it had on him?

A. I could not tell whether there was any effect when he was not with me. He went to work.

X. How long did he continue to go to work after you married him?

31 A. About five or six weeks, this time.

X. What business was he engaged in?

A. None.

X. He did nothing whatever during the time you lived with him after the first five or six weeks, in the way of business?

A. He did not go to work the first five or six weeks, it was several months after we were married.

X. Then after the expiration of that five or six weeks he was not engaged in any business at all during the time you lived with him?

A. I did not say that.

X. What did you say?

A. Well, he would not attend to business. Business men came to see him, and when he could see them *going by* just a few steps he would not go. He practiced law a little. I said there is a man with a case. Why don't you get up and go down? Oh; let them wait. I said he will go away and give it — some one else. He would not get up until he was ready.

X. That was really one of the subjects of controversy between you, wasnt it, that he would not get up when you wanted him to.

A. I have nothing to say about that at all.

X. Well, then, as I understand you, practically the entire period that you lived with Mr. Snyder he was engaged in no business of any consequence, except during the five or six weeks heretofore referrred to?

A. No.

X. But he would go off down town and spend the most of the day?

A. No, I told you he would lie around the house in the day time sleeping, and when he went out he would not come back until about 12 o'clock at midnight, during the latter part of the time. I don't want to talk any more than I have to, because I got up out of a sick bed to come here. I came near dying last night, and I should not be out now.

32 X. Then his habits, as I understand you, were to stay home, during the day and spend the nights, or the greater part of them away *away* from home?

A. Yes; of course not every night, but very often.

X. That was the case during the greater part of your married life?

A. Oh; I can't tell. I wont pretend to answer that. I don't know whether it was or not.

X. I want to know Mrs. Snyder, whether you ever had any correspondence with Mr. Snyder's former wife.

A. Yes, she has told you.

X. At what time?

A. I don't know, about the time I left Mr. Snyder. I know she was not lady enough to reply to my last letter.

X. Do you know about how many letters you wrote her?

A. I guess two; I cannot say positively.

X. Can you state the occasion for that correspondence?

A. Yes, I think the first was, I asked her on what grounds she secure- her divorce. That was my object then. The second time was if she knew of his taking morphine. Other than that I don't know, and I wouldn't tell you if I did.

X. And you wrote after you had separated from Mr. Snyder, to his first wife, to inquire if she ever knew of his taking morphine?

A. You heard me state that.

X. I don't want to annoy you; I just want to——

A. I decline to answer.

X. Did you ever see Mr. Snyder from the time you separated from February, 1907, up to the time of his death?

A. I saw him on the street yes.

X. You never saw him except for this casual meeting on the street?

A. No; Oh, yes I did. I went to his office once, and he came to the top of the stairs and cursed me and swore so at me that the neighbors heard it for a square around.

X. Do you know how long before his death that was?

A. That was soon after he moved there. It was soon after
33 I left him. Perhaps two or three months after I left him.

X. Something like a year before his death?

A. Yes.

Redirect examination by Mr. LATIMORE:

Q. Mrs. Snyder, you say Mr. Snyder did some political work during the time you lived together?

A. Yes. He was making speeches and that sort of thing. He did not get any money for it, though, to my knowledge.

Q. And he practiced law to some extent?

A. Oh, yes a lit*le.

Q. Did he or not have any regular employment at any time.

A. No sir. He made a few collections and kept all the money he collected, and a bigger liar never walked the earth than that man.

Q. You were married by the Pastor of the Presbyterian Church?

A. No, Episcopal.

Q. Do you belong to the Church?

A. The Presbyterian Church, since I was fifteen years old, about thirty years.

Q. Where is your membership?

A. Brooklyn, the Bedford Presbyterian Church in Brooklyn. I belonged to the First Presbyterian Church here for five years. I took my letters from Wellesboro here, and from here there.

Recross-examination by Mr. SIZER:

X. Your feeling against Chas. C. Snyder are very bitter, are they not, Mrs. Snyder?

A. Bitter in this way, because of his misuse of me, that is all.

X. Then you think, as you have just stated, that he was the worst man that ever lived?

A. He was as kind as possible. He knew how to be a gentleman. He lost control of himself completely through the use of those drugs and could not do otherwise. It was taking the drug. He did not know what he was doing half of the time.

(Signed) MRS. IDA SNYDER,
By I. H. LINTON,
Commissioner, by Consent of Counsel.

34-42 EXHIBIT "A" TO DEPOSITION OF MRS. IDA SNYDER.

Filed January 14th, 1909.

This is to certify that Chas. C. Snyder and Ida M. Forsyth were united by me in Holy Wedlock on the First day of July 1904 at the Church of the Redeemer Brooklyn New York in the presence of Louisa Iholstrom and Nathaniel Atkins as witnesses all of which was duly certified to the Register of the Borough and my certificate of the same given on said date.

T. P. LACY,
Rector of Church of Redeemer.

Brooklyn August 12th 1908.

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43 *Deposition of Thomas F. Diack.*

Filed January 18th, 1909.

THOMAS F. DIACK, the next witness, being duly sworn, deposed as follows:

Direct examination by Mr. LATIMORE, for defendant:

Q. Mr. Diack, what is your name, age and residence?
A. Thomas F. Diack, 39, 668 Nostrand Ave., Brooklyn.
Q. Were you acquainted with Chas. C. Snyder who died at 662 Nostrand Avenue about May 1st, 1908?
A. Yes, sir.
Q. State what business or social relations you had during his lifetime.
A. The Independence Leage hired a building, a portion of a building, from an estate that I was executor of, and Mr. Snyder was Chairman of the House Committee and Manager of the Club. It was a political organization, and I dealt with the club through him as landlord and tenant.
Q. In what capacity did you have charge of the property he occupied?
A. Renting it and collecting the rents.
Q. Did you, or not, own the property?
A. My mother owned the property, i. e., she was alive when
44 he first went in but she died in the meantime. Of course, that is why I said the estate before.
Q. What was his conduct towards you when you would collect the rent?
A. Why, very gentle up to the time the Club got in arrears; you might say the last six months as tenants. He always treated me as a perfect gentlemen:
Q. Would, or not, you at times find him acting temperately and gently, and at other times find him in a gentle frame of mind?

A. Well, I don't know just how to answer that question. He was pleasant enough when I went in and talked with him. He would get worked up to a high fever when I left him. I probably antagonized him. Get him wild and he would go on like wild fire in his arguments.

Q. Would, or not, he abuse you?

A. Abuse me, yes.

Q. Did he or not threaten to kill you?

A. Well, he made the statement one time that he would like to kill everybody connected with the whole place; me included. He seemed to have a grudge against a half a dozen in the club that he thought were opposing him politically, and naturally, he was very sore. They had just met with a defeat at that election and he thought that there were several of them that had worked against him; probably they did, I don't know. That was a question I was not interested in.

Q. Were you a member of that Club?

A. No sir.

Q. Was, or not, there any substantial cause or reason why he should abuse or threaten to kill you?

A, Well I don't think there was, but of course, he thought there was. He made arrangements with me the first part of the year that if the Club went to pieces that he should have the privilege of occupying the upper portion of the house for the remainder of the Club lease. Of course, I agreed to that, The Club having gone to pieces along the first of December or January, why, I didn't know until the middle of the month that I was not going to get that month's rent. When I found that the Club was going in Bankruptcy and not financially responsible, I released the Club from the balance of the lease; then I went to Snyder and asked if he was going to keep the upper portion of the premises for the unexpired time he said he was. Then a dispute arose as to who was going to pay the current month's rent. It was really the first ungentlemanly argument I ever had with him. But I gave him to understand then and there if he did not pay the first month's rent, I would dispossess him.

Q. Was there any other cause for which he might have had offence at you?

A. No other than my pressing him for the rent when he was hard up.

Q. Now, you speak of his conduct on these occasions, just state what this conduct was in words and acts as nearly as you can?

A. He would walk up and down the room and swear that I was trying to do him and I was treating him fairly.

Q. Would he, or not, on these occasions, curse and abuse you?

A. Oh yes, I used to shut him up as fast as I could.

Q. Was or not, he loud and boisterous with his talk with you?

A. Sometimes, yes, very loud and boisterous. Depending upon how much money he had in his pockets.

Q. Did he or not, threaten to strike, or even did strike you?

A. No, I don't think he did; other than he would have liked to ill the whole bunch and have nothing more to do with them.

Q. Do you, or not recollect that Mr. Snyder had been drinking n these occassions?

A. I don't think he was drinking then. Probably on the occasions hen the Club would have a blow out or a stag and they could have keg of beer. I don't know as I ever saw him drinking. Of course, don't doubt but what he did. I have no occassions to say so, hough.

Q. John Cleary had a saloon near his place?

A. Surely. That was a hang out for part of that political bunch. The lower electors of that ward hung out in Carey's. That was their headquarters. No doubt, when they were round there and the other men had been drinking, I suppose he rank too.

The complainant objects to the testimony of the witness as to what e inferred or supposed to be the habits of the political organization.

WITNESS: Surely. I am not saying they are; I was not a member. That simply is supposition.

Q. When did you first get axquainted with Mr. Snyder?

A. When he first took the place.

Q. That was when?

A. Year or more before his death. Might have been fifteen months or about a year.

Q. You remember the day you saw him when he was found dead. What day was it?

A. May 1st, 12 o'clock.

Q. State where you found him and the position of his body and the condition you saw surrounding him fully?

A. Second story, front hall bed room, at 662 Nostrand Avenue. He way lying dead on a lounge with a rubber gas tube from the gas get to his body. A bottle of Chloroform was hanging over his face dripping. The general character of the rooms was upset. Had several things labeled, for instance, he had a little dish of fish which said, "Just give this to Mr. Auster's little girl," and I think there were two or three little articles that he had labeled to whom they should be given to. I think a frame or something was to be sent around to Cleary's probably the ward map, if I remember correctly. Looked as though he had gone about it in a very deliberate manner. In fact, the gas had been shut off at the meter and had been forced that night in order to turn it on. That is the general condition of the rooms; everything was upset. That is all there is to it.

Q. Was, or not, the gas turned on when you went in?

A. Yes sir.

Q. Were you, or not, among the first who got to him after he was dead?

A. Yes sir.

Q. Who was with you?

A. My brother and a policeman.

Q. What is your brother's name?

A. George.

Q. Did you, or not, see any small bottles about the room or his bed?

A. The only bottles I saw were some catarrah cure bottles or vails on the mantle piece of the front office of the suite.

Q. Did you or not, see any bottles in either his offices or his bed room labeled cocaine?

A. No sir.

Q. Did, you, or not, know the bottles had been filled with cocaine or any other articles?

A. No sir. I could not swear to what the bottles contained.

Q. Did you, or not examine them to see if they were labeled cocaine or labeled at all.

A. No sir. Just in causal way.

Q. You did not examine them then to ascertain whether they were labeled?

A. May have; had them in my hand. I must have read the label or I would not have known whether they were catarrah cure bottles or not. They were Turk's Cattarrah cure bottles.

Q. Did you find any other bottles besides the Turk's Catarrah Cure Bottles?

A. Not that I know of.

Q. Mr. Diack, do you or not know it to be a fact that dope or cocaine fiends, or cocaine users procure these bottles of catarrah medicine for the purpose of getting the cocaine?

The complainant objects to the foregoing question because the witness has not qualified himself as an expert on the subject of
48 habits or dope fiends or cocaine users, and therefore, his opinion on the subject would not be competent.

A. No, I could not swear.

Q. Do you know that these cattarrah medicines contained cocaine?

A. I have always heard that they did, but I do not know.

The complainant objects to the testimony of the witness as to what he has heard, that being incompetent and inadmissable.

Q. Did you, or not, see any bottles, similar to the ones you have described, on former occasions when you went to Mr. Snyder's office or bed room?

A. Not that I know of, Not that I remember.

Q. Did you, or not, see these bottles, which were in Mr. Snyder's room, which were labeled cocaine?

A. No.

Q. Did you, or not, come to the conclusion from the treatment you received from Mr. Snyder that he was some kind of a dope fiend?

The complainant objects to the foregoing question because the witness has not qualified as an expert, and his opinion or his conclusion on the matter involved in the question would be wholly inadmissable.

A. Well, after he was dead, the thought flashed through my mind that he *nyst* have been a crazy fool or dope fiend to end his life this

ay because he was up against a streak of hard luck and I excused im for his violent actions toward me for that reason.

Cross-examination by Mr. SIZER:

X. This controversy that you and Mr. Snyder had about that ionth's rent was finally settled by his paying the rent, was it not?
A. Yes, but I had other controversies about rent too. Every ionth; because he would be hard up and he would say he did not have a friend; every one was against him.
9-92 X. Well this disagreement was about the rent of the month during which the Club became insolvent, and the con-oversy was about the rent during the last month that the Club was n its feet?
A. Yes, He never got over that. He always thought I had done im about the half month's rent; and every month he would say hat I did him out of that fifteen dollars. I got tired listening to him nd said let that drop that we settled that once and for all.

Redirect examination by Mr. LATIMORE:

Q. *They* have been bottles in the room of Mr. Snyder labelled ocaine that you did not see?
A. I could not answer that; I did not know that there was.
Q. Do you, or not, mean to say that you do not know whether here *there* was or was not?
A. I did not see any.
Q. There might have been some there that you did not see labeled ocaine?

The complainant objects to the last question because the witness as answered fully as to his knowledge of cocaine bottles, and co-aine bottles being in the room; and the question whether or not here might have been bottles there that he did not see is a matter f inference or opinion, and not a question of fact upon which the itness himself can shed any light.

A. Well, I would not know how to answer a question like that.
Q. Did you see every bottle that was in his room?
A. Well, I could not tell.

Signature of witness waived.

Sworn to before me this 14th day of January, 1909.

JOHN W. INGRAM,
Commissioner.

* * * * * * *

93 *Deposition of Mrs. Annie Snyder.*

Filed —— 1st, 1909.

Mrs. Annie Snyder, Witness for the Complainant, Taken on Notice at the Office of Pritchard and Sizer on the 12th day of February, 1909, in the Presence of J. B. Sizer, Counsel for Complainant, and Judge Snodgrass, for Defendant.

Witness being duly sworn deposed as follows:

Direct examination by Mr. SIZER:

Q. Are you the complainant in this cause, Mrs. Snyder?
94 A. Yes sir.
Q. When were you married to Chas. C. Snyder?
A. August 23rd 1880.
Q. You were his wife and living with — as such, at the time the certificate filed as Exhibit "A" to the bill in this cause was issued—that is, on November 23rd, 1887?
A. I was.
Q. Was this certificate in your possession for a number of years prior to Mr. Snyder's death.
A. Yes sir.
Q. Did you get a divorce from Mr. Snyder, and if so, state about When it was?
A. I think it was in the year of 1901 or '2.
Q. Was that obtained in the Court House here?
A. Yes sir; Chancellor McConnell.
Q. And on your application, was it?
A. Yes sir.
Q. How long prior to that time had you had that beneficiary's certificate in your possession?
A. I can't say just how long I had it in my possession. There were a number of policies I had, and I don't know just how long I had it. But I am postive I kept up the payment on it for fifteen years.
Q. You mean for fifteen years prior to Mr. Snyder's death?
A. Yes sir; I am positive of that.
Q. After you got your divorce, did you have any conversation with any member of the local order of the Mystic Circle with reference to your right to the policy?
A. Yes sir.
Q. Did they advise you what your rights would be?
A. Yes sir; I talked with them several times; and they always told me that if I held possession of that policy, no one could take the beneficiary from me.

Judge SNODGRASS: I object to that as irrelevant and in-
95 competent evidence, on account of the fact that the local organization has nothing to do with the obligation, and as

not in accord with the rules and regulations of the constitution and by laws governing the same.

Q. Some time after your divorce had been obtained, did you write the letter which is filed as Exhibit "A" to the answer in this cause by the Supreme Ruling of the Mystic Circle?

A. Yes sir.

Q. At whose suggestion was it that you wrote that letter?

A. My Attorney, Mr. Robert Pritchard.

Q. Did he or not advise you that you had better get information direct from the Supreme Ruling?

A. Yes sir.

Q. And did you, in reply to that letter, receive from the officers of the Supreme Ruling Assurance that you would receive the benefits of the certificate if you kept the assessments paid up?

A. I certainly did.

Q. How many children did you and Mr. Snyder have?

A. Four sons.

Q. What were their ages the time you obtained your divorce?—Or you may state what their ages are now, and we can estimate from that how old they were at the time of the doverce?

A. The eldest is 24; the next 22; 20 and 18.

Q. Were those children all minors at the time you get your divorce?

A. Yes, certainly.

Q. What means of support did you have, Mrs. Snyder, after you got your divorce? In the first place, did you get any alimony from Mr. Snyder; and if no, what other means did you have?

A. No sir; I got no alimony—nothing but what we made by our own earnings, the children and I. I never received a dollar from Mr. Snyder in support of those Children.

Q. Was it not a considerable sacrifice to you to keep up the payments on this certificate?

A. It was a very great hardship, with that many children to support at that time.

Q. Would you have kept up this policy but for the assurances you had had that you would receive the benefit of the policy on Mr. Snyder's death.

A. I certainly would not.

Q. Do you know the date of Mr. Snyder's death?

A. About May 1st.

Q. In what way did you learn of it?

A. By telegraph and by letters.

Q. Where did he die.

A. In New York—Brooklyn, New York, I think is the address.

Q. Where was he buried?

A. Here in Chattanooga. He's buried at Forest Hill's.

Q. Did you ever see Mr. Snyder during his life, between the date when you obtained your divorce and the date of his death?

A. No sir.

Q. Prior to the time you obtained the divorce had you and he been living apart for some years?

A. We had been living apart since our youngest child was four years old, and the maintenance of the children depended on me since then.

Q. Do you remember what date it was that you and he ceased to live together?

A. Nothing only I remember that our youngest child was about four years old. You can figure it from that.

Q. And he is now, you say, eighteen?

A. Yes sir.

Q. After Mr. Snyder's death, did you obtain blanks on which to make the necessary proofs, in order to make the necessary proofs, in order to obtain payment on this beneficiary's certificate? and if you did, state from whom you obtained them?

A. From my son. I think they were given to him by Mr. Lewis or Mr. Scott.

Q. Who was Mr. Lewis?

97 A. The Collector of the Fraternal Mystic Circle.

Q. That is, the man who collected the assessments or dues?

A. Yes sir.

Q. I hand you a paper attached to agreement of counsel in this case, headed "Beneficiary or Claimant's Statement, "Proof of Death or interest," and I will ask you to state whether or not that is the paper which was given to you by Mr. Lewis and which you filed as the proof of Mr. Snyder's death?

A. Yes sir; that is the paper.

Q. Did you write these answers in your own handwriting?

A. Yes sir.

Q. Where were you at the time?

A. In Mr. Thomas' office. I came to Mr. Pritchard's office and he was out of the City; so I went to Mr. Thomas' and asked him to assist me in filling out this paper. I thought it was necessary to be done at once.

Q. Do these answers you have written in this paper, insofar as they are based on your own knowledge, state the facts correctly?

A. Yes sir; I tried to tell the very best I knew; I tried to answer the questions as best I knew. Mr. Thomas assisted me; I would ask him to read to me, and he would tell me.

Q. In answer to interrogatory #14 in the proof of loss, you state the immediate cause of the death was asfixiation by illuminating gas; and in answer to question #15 you state the circumstances of his death was suicide. Were those statements based on any knowledge that you had yourself, or simply on information you had received?

Judge SNODGRASS: Defendant objects to the foregoing question, as not relevant, and to the answer as not admissable as an explanation of the written statements of the cause of death.

Objection overruled, and appeal prayed and granted.

A. They were based on reliable information.

98 Q. You were not present at the time of his death; and of course didn't know anything about it personally.

A. No sir.

Q. In answer to question 20-A as to the habits of the deceased ith reference to the use of spirituous or fermented liquors, you ate, "He did drink prior to his leaving Chattanooga." Now, please tate the extent of Mr. Snyder's drinking prior to his leaving Chatnooga, or while you were living with him, whether or not he ver drank during your acquaintance with him to such an extent o impair or injure his health?

A. He drank, but never to the extent of impairing his health.

Q. Now, so far as his habits of drinking were concerned, were hey about the same during the entire period of your married life?

A. There were times when Mr. Snyder did not drink for nearly wo years. He would take a pledge, and then live up to it one or wo years; and then he would break the pledge and drink. I could'ell you how long, but he drank off and on.

Q. Well, did that condition of affairs exist with practical uniormity furing the entire period of your married life?

A. He would drink awhile, and then go off and quit awhile, yes ir.

Q. After you ceased to live with him, did you know anything bout his habits?

A. No sir.

Q. In answer to Question 20-B. as to whether or not the deceased sed Morphine, opium, chloral or -ther drugs or narcotics, you say, I think he used Morphine." Now, please state the facts relative or o your knowledge, or any knowledge or information you may have ith reference to the use of Morphine by Mr. Snyder, or on what it as you based your answer that you gave to that question?

A. I have never seen Mr. Snyder use morphine, I have seen him efuse to take it from the doctor. But while in Chicago there was a iece of something on the floor that looked like a piece of white sponge; and I told the Children to take it to the druggist and 09 have it analyzed, and see what it was; and the druggist said it was morphine. But I don't know that Mr. Snyder ever ook any of it. That is why I thought he had used some; but I have o positive knowledge of his ever having drugs of any kind.

Q. That was, while you say, you were living in Chicago, and bout what year?

A. I don't know that I could say the year.

Q. Well, it was prior to the divorce.

A. Oh, yes.

Q. Can you say how many years before the divorce it was?

A. I don't know?

Q. And, that you say, now, was the only occasion when you saw anything resembling morphine around his place?

A. Postive- the only occasion I ever saw anything of the kind *a* around Mr. Snyder or the place.

Q. But you don't know of your own knowledge, you say, that that as morphine?

A. No sir; I only know what the druggist said. I don't know that he took any of it; I only said I thought so.

Q. In answer to question # 33 as to whether or not the health of

the deceased was impaired or death caused, directly or indirectly by intemperance or habits of, life, or by any immoral practice, your answer is, "Don't know, but think it was due to manner of living." Please state on what facts you based that answer, and what was the meaning you intended to convey?

Judge SNODGRASS: That is objected to as not explainable by the witness at present time, no explanation having been made, and it not now being competent to permit a change of the conditions.

Objection overruled and appeal prayed and granted.

A. I meant that he had wronged his family; and he was perfectly desperate, and so that he could not return to them. We
100 had a son that was in the United States Army; and his time expired and Mr. Snyder wished this son to come and live with him, but instead, this son came home to us. And he then felt that the last link between him and his family was broken, and he knew that we would never recognize him. He mistreated his family and reaped the reward.

Q. Did you have any knowledge or definite information that Mr. Snyder's health had become impaired by reason of intemperate habits or immoral practices or anything of that kind?

A. No sir.

Q. After these proofs of death had been submitted to the Supreme Ruling, did you receive any suggestions from any of the officers asking you or advising you to file affidavits as to Mr. Snyder's habits?

A. Yes sir, I think that came from headquarters.

Judge SNODGRASS: That is objected to, as no written suggestion to that effect from headquarters is produced, and it is not claimed that the witness personally visited the headquarters.

Objection overruled and appeal prayed and granted.

Q. Look at the letter filed as Exhibit "5" to the agreement of Counsel on this cause, purporting to bear date of June 2nd, 1908, and state if you recognize that as a correct copy of the letter that you received from the head office of the Company?

A. I think it is.

Q. Look at the paper filed as Exhibit "6" to the agreement and state if that letter was signed by you and ad-ressed to the head office of this defendant Company?

A. That is my signature, yes sir.

Q. Look at Exhibit "Z" to the agreement of counsel referred to and state if you recognized that as a copy of the letter that was sent you by the Supreme Ruling?

A. Yes sir.

101 Q. Now in pursuance to the suggestion contained in these letters, state whether or not you did furnish a number of affidavits with reference to Mr. Snyder's habits, manner of life etc. during the period that he lived in New York and Brooklyn immediately preceeding his death?

A. I did.

Q. Look at the batch of papers filed as Exhibit "7" to the agree-

ment of counsel in this cause, and state if those are the first lot of affidavits that you furnished in that connection?

A. Yes sir; they are the papers.

Q. Now, look at the papers filed as Exhibit "8" to the agreement of counsel referred to, and state whether or not that is an *a* additional lot of affidavits that you sent bearing on this matter?

A. I take them to be the same.

Q. At the time you forwarded these additional affidavits did you also send an affidavit of your own to the Supreme Council?

A. I did.

Q. Setting out the facts as you knew them with reference to your claim to this certificate?

A. I certainly did.

Q. Look at the paper here handed you, and state if that is a true and correct copy of your own affidavit that you sent to the Supreme Counsel?

A. Yes sir.

Q. Please file the said copy as Exhibit "A" to your deposition?

A. I herewith file it as requested.

Q. Now, this affidavit of yours, you say*m* was sent along with the additional affidavits which you have heretofore testified as having sent?

A. Yes sir.

Q. Did you hear Mr. Thomas' testimony this morning with reference to a letter addressed to the Supreme Ruling by the local order of the Mystic Circle with reference to this claim?

A. Yes sir.

102 Q. Look at this paper filed as Exhibit "A" to Mr Thomas' deposition and state, first, if you saw the original letter that Mr. Thomas referred to, and second, if this is a true and correct copy of it according to your best recollection?

A. I think so; yes, sir.

Q. Was the original also enclosed and addressed to the Supreme Ruling along with your own affidavit and other affidavits hereinbefore referred to?

A. I think they were all sent together.

Mr. SIZER: The defendant is here notified to produce and file the original affidavit of Mrs. Snyder, copy of which is filed as Exhibit "A" hereto; and in the event of their failure to do so, complainant will prove said affidavit by secondary evidence.

Q. Referring now to the copy of your affidavit which you have filed as Exhibit "A", I notice that it gives the date of your divorce from Mr. Snyder as June 4th, 1901. At the time this affidavit was prepared, did you have a copy of your divorce decree before you?

A. Yes sir; we got the dates from that.

Q. Did you forward a copy of that divorce decree to the Supreme Ruling?

A. We did.

Q. Was that done at their request?

A. Yes sir.

Q. Now Mrs. Snyder are the statements in this affidavit, Exhibit "A", true to the best of your knowledge and belief?

A. They certainly are.

Q. I notice, that, in this affidavit, you refer to a telegram and letter received by your son Bernard C. Snyder a day or two preceeding Chas. C. Snyder'- death.

A. I did, I read them.

Q. Are the contents thereof correctly stated in this affidavit?

A. They are.

103–112 Q. Did you ever see the Constitution and by laws of the Supreme Ruling of the Fraternal Mystic Circle until after Mr. Snyder's death?

A. No sir; I did not.

Q. Did you have any knowledge of their contents or provisions except from such information as was given you by the officers of the company.

A. I did not.

Q. Please examine the two letter- herewith handed you, dated respectively August 10th, 1908 and August 11th 1908, and file them as Exhibit- "B" and "C" to this deposition, and state if you received those letters in the due course of mail?

A. I did receive these letters in the due course of mail, and herewith file them as requested.

The defendant at this time declined to cross-examine the witness reserving the right to do so at a later date.

And further deponent saith not.

ANNIE SNYDER.

Sworn to and subscribed before me this the 12th day of February, 1909.

BOYD THOMPSON,
Notary Public.

* * * * * * *

113 EXHIBIT "A" TO DEPOSITION OF MRS ANNIE SNYDER.

Filed March 1st, 1909.

STATE OF TENNESSEE,
County of Hamilton, ss:

Mrs. Annie Snyder, being duly sworn deposes as —:

114 I am the same Mrs. Annie Snyder who is the beneficiary in Benefit Fund Certificate No. 2705 issued by the Fraternal Mystic Circle to Chas. C. Snyder on November 23rd, 1887; I was the wife of Chas. C. Snyder at that time. On June 4th, 1901, I obtained a divorce in the Chancery Court of Hamilton County, Tennessee, granting me a divorce from Chas. C. Snyder. I have not seen nor talked with said Snyder from the time said divorce decree was rendered up to the time of his death. I lived continuously in Chattanooga, Tennessee, between said dates and he lived in New

York and possibly other places. I had no correspondence with him subsequent to said divorce.

I had paid the assessments on said benefit fund certificate for a number of years prior to the date of said divorce, and on the 25th of June, 1904, I wrote to the Supreme Recorder of the Fraternal Mystic Circle a letter with reference to my interest in said policy a copy of which letter together with a copy of the reply thereto signed by F. H. Duchwitz, Supreme Mystic Ruler, I attach to this affidavit. Later on I had some further correspondence with the officials of the Fraternal Mystic Circle consisting of a letter written to Mr. Duchwitz by me dated August 8th, 1904, and a reply thereto signed by Mr. Duchwitz dated August 11th, 1904; letter from Mr. J. D. Meyers, Supreme Recorded, to me dated November 19th, 1906, and my reply thereto dated Nov. 24th, 1906. I attach copies of these letters also to my affidavit.

I continued to pay the assessments on this benefit certificate in view of the assurance given me by this correspondence that the certificate would be payable to me in the event of Mr. Snyder's death unless he should change the beneficiary therein, and further assuring me, in substance, that the beneficiary could not be changed so long as I retained possession of the certificate.

The answers made by me to inquiries propounded in the proof of death submitted to me after Mr. Snyder's death were written out in the office of Mr. W. G. M. Thomas, who I understand, is the Worthy Ruler of the Local Ruling of the Fraternal Mystic Circle. I conferred with Mr. Thomas about this matter, my own attorney being at that time out of the City, and he advised me with reference to my answers. I explained to Mr. Thomas that I knew nothing personally about Mr. Snyder's habits at the time of his death or at any time since I obtained my divorce from him. I did not intend in anything that was said in my answers to the interrogatories propounded in the proof of death, to indicate that I knew what Mr. Snyder's habits were. While Mr. Snyder would drink occasionally during the time that I lived with him and knew him, I am sure that he never drank or used narcotics during the time that I knew him to such an extent as to impair his health. If he used either after my separation from him, I do not know anything of it. Of course after my separation and divorce his habits and conduct were beyond my control as well as b-yond my knowledge. Of course I have no personal knowledge and no definite information as to what was the immediate cause of his death. On the Monday preceeding the death of Chas. C. Snyder, which occurred on Friday the first of May, My eldest son, Bernard C. Snyder received a telegram from New York purporting to be signed by one Dr. Ledbetter stating in substance about as follows: "Your father injured, Wire twenty dollars at once". My son did not wire any money as requested or make any response to the telegram. A day or two after Mr. Snyder's death my son Bernard received a letter from Mr. Snyder by registered mail. The letter was typewritted but I recognized Mr. Snyder's signature to it. T-e letter consisted of about three typewritted pages. It stated in substance, that Mr. Snyder

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had himself sent the telegram purporting to have been signed by Dr. Ledbetter and that at the time of writing the letter he had become satisfied that Bernard would not sen- the money as requested. He stated in the letter that his rent was due, that it amounted to $20.00 and that he could not bear the disgrace of being put out of his room, and he therefore thought that he would end it all by committing suicide. The letter indicated further that Mr. Snyder was very much disappointed that Bernard who had just completed a term of service in the United States Army, had come to Chattanooga instead of going to New York to live with his father. The
116 letter *was* as a whole indicated that Mr. Snyder's suicide was caused by these two concurring circumstances; namely; his disappointment at the failure of his eldest son to come to New York and live with him and also financial trouble he referred to. I have been informed that Mr. Snyder's practice in New York was practically broken up in account of the trouble he had with his wife whom he had married after I had obtained my divorce from him, and that at the time of his death he was practically penniless.

I have no copy of the affidavit or statement I made in the proof of death and do not recall exactly what I said therein. I notice however, in a letter from Mr. Duchwitz dated June 30th, he says that I stated in my affidavit that the cause of Mr. Snyder's death was no doubt — to his mode of living and that he used morphine. I may have said that I thought Mr. Snyder's mode of living had something to do with his death and know that he was recklessly extravagant and no doubt his financial condition at the time of his death was largely attributable to that fact. So far as his use of Morphine is concerned, as I have already explained, I have no personal knowledge of it although I may have said in that affidavit that I thought he used it. I am quite sure, as I have already stated, that he never used morphine to such an extent as to impair his health or faculties during the time that I lived with him and I never meant to imply anything of the kind.

I have referred hereinbefore to the fact that after I was divorced from Mr. Snyder he married another woman. He afterwards separated from this woman and their relations were very unfriendly. I have seen letters that she wrote him and threatened to ruin his business and get even with him for alleged wrongs that he had done her, and I have been informed that after their separation she did practically ruin his practice.

I received a letter from Mr. John J. Cleary of New York, Brooklyn, New York, who was an intimate acquaintance of Mr. Snyder's, a copy of which I attach to this affidavit. Mr. Cleary has also made a separate affidavit which I am forwarding along with this affidavit of my own.

117 I also send herewith a letter signed by the officers and some of the members of the Local Ruling with reference to my claim to this certificate.

—— ——.

Sworn to and subscribed before me this the 14th day of July, 1908

—— ——.

EXHIBIT "B" TO DEPOSITION OF MRS. ANNIE SNYDER.

Filed March 1st, 1909.

PHILADELPHIA, PA., *August 10th*, 1908.

Mrs. Annie C. Snyder, Claimant, 417 Cedar St., Chattanooga, Tenn.

DEAR MADAM: You are hereby notified that your claim as the alleged beneficiary of Chas. C. Snyder, deceased, under Benefit Certificate number 2705, issued by the Supreme Ruling of the Fraternal Mystic Circle, has been rejected by the Supreme Executive Committee as not being a valid one under the Constitution and Laws of the Order and contract of Membership.

Yours very truly,

J. D. MEYERS,
Supreme Recorder.

[SEAL.]

EXHIBIT "C" TO DEPOSITION OF MRS. ANNIE C. SNYDER.

Filed March 1st, 1909.

PHILADELPHIA, PA., *Aug. 11th*, '08.

Mrs. Annie C. Snyder, Chattanooga, Tenn.

DEAR MADAM: Referring to our former correspondence in reference to Certificate No. 2705, issued by our Society to Chas. C. Snyder, dated November 23rd, 1887, will say that the Supreme Executive Committee of our Society, after careful consideration of all of
118 the proofs presented, decided that our Society was in no way liable under said Certificate; for the reason that said member (Charles C. Snyder's) death was due solely and wholly to the excessive use of narcotice, alcoholic, vinious and malt liquors and the excessive use of morphine and other opiates.

I also received a communication from Mr. Alex Scott, Worthy Ruler of Chattanooga sub-ordinate Ruling No. 75, located in your City, to the effect that you paid the assessments and dues under said Certificate from June, 1904 up to the time of Mr. Snyder's death; and intimated that you probably made those payments because of the correspondence you had between you and some of the Supreme Executive Officers in June, 1904. If that be true and you will furnish us with an affidavit setting forth those facts, together with a statement of the various amounts which you paid since said date to keep the membership of said Chas. C. Snyder in good standing, I shall recommend to our Supreme Executive Committee that you be reimbursed for the amount paid under the circumstances above narrated. You and your attorney are and were familiar with the constitution and laws of our Society and knew that no benefits under any certificate or beneficial membership in our Society could be made or be payable to a divorced wife or husband; but that in the event of the member having been divorced from his wife without designating a new beneficiary, the benefits, if any, would be payable according to Section 1 of Law 1 Supreme Ruling Laws, a copy of which I

herewith enclose you, and you could not receive any benefits under the certificate in question even had the claim been a valid one; but, as state- before, our Society disclaims any liability whatsoever under said certificate to *any* person or persons, and we are prepared to resist said claim, and shall resist it to the Court of the last resort, if necessary, the only reason why I am writing you at length and making the suggestion that I would recommend to our Supreme Executive Committee that you be re-imbursed for the amount which you
119 have paid to keep Mr. Snyder's membership in good standing since June, 1904, is because of the misinterpretation—if I may so term it—placed upon my letter by yourself and your attorneys. I stated that under the laws of our order a member has an absolute right to change his beneficiaries at any time, so long as the beneficiary designated by him comes within class First or Second described in Section 8 of Law I, i. e. that the beneficiary must be either blood relatives or dependants; but I evidentially overlooked the statement in your letter to the effect that you sued for a divorce from Chas. C. Snyder and that the Court has granted it. Whether it was an oversight on the part of my stenographer or whether I overlooked the statement made by you that you had secured a divorce from Mr. Snyder, I do not know. It is a fact, however, that my letter is silent upon the question of your having obtained a divorce from your husband, and that therefore you could not under the Laws of our Society, in force then and ever since that time, be or become a beneficiary of Chas. C. Snyder, deceased. You and any one else can readily understand that I could not change the laws of our Society. That power is vested solely in our Supreme Ruling, which meets bi-ennially, and is the only lawmaking body of our Society; and while I am satisfied that you fully understood all of the provisions of our laws governing Mr. Snyder's membership and Benefit Fund Certificate, and knowing as a matter of law that you could not recover under said certificate from our Society, even though the claim was a valid one, I want to correct any error that I may have inadvertantly made—if any—in writing you the letter under date of June 28th, 1904; and it is for that reason alone, that I am willing to recommend that you be reimbursed for the money which you have paid out under a misapprehension of the facts, provided you are willing to make such statement under oath, as above indicated.

We have evidence in our possession that Mr. Snyder purchased morphine and other tablets in 500 lots, and that he used Morphine and other opiates constantly, and that for a great many years he used liquor to a great excess; and it seems to me that under all
120 the circumstances my offer is a liberal one and all that could be asked of anyone under similar circumstances.

Awaiting your reply, I am,

Yours respectfully,

F. H. DUCHWITZ,
General Counsel F. M. C.

Agreement.

Filed April 13th, 1909.

In this cause it — agreed that J. D. Meyers of Philadelphia Pa., is the Supreme Recorder of the defendant Company and has been continuously since April 6th, 1900, and as such he is familiar with, the keeper and custodian of the minutes, records and papers of the defendant Company.

That he first entered the employment of the Defendant Company in November, 1896, and has been continuously since then Assistant Bookkeeper, Bookkeeper, General Bookkeeper, Chief Clerk and Supreme Recorder.

It is also agreed that the said J. D. Meyers would depose to the following facts, which are to have the same force, effect and verity as if his deposition was regularly taken and filed in this cause, subject alone — exceptions for irrelevancy and incompetency, viz:

The deceased, Chas. C. Snyder, who died May 1st, 1907, at #662 Nostrand Avenue, Brooklyn, N. Y. joined the fraternal Mystic Circle of Ohio on November 3rd, 1887. The deceased was at that time a citizen of Chattanooga, Tennessee, and joined a subordinate lodge at that place. The said Fraternal Mystic Circle was incorporated under the laws of the State of Ohio December 9th, 1884, and concurrently there was formed a voluntary organization known as the Supreme Ruling or governing body with headquarters at Columbus, Ohio. On April 27th, 1895, the Supreme Ruling of the Fraternal Mystic Circle was incorporated under the laws of Pennsylvania with headquarters in the City of Philadelphia, Pennsylvania.

On June 5th, 1895, the membership and assets of the Fraternal Mystic Circle were transferred in perpetuity to the Supreme Ruling of the Fraternal Mystic Circle, the defendant, the latter organization to assume the liabilities of the former, all of which was accepted and ratified by the latter organization on the same day.

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The said Chas. C. Snyder was suspended as a member for non-payment of the April assessments 1897; but was subsequently reinstated by making proper application and payments and signing certificate of health etc., being filed with the petition of said Snyder as Exhibit "C" in this cause.

The Constitution and Laws of the Fraternal Mystic Circle as to misstatements in securing beneficial membership, forfeiture of membership etc. in November 1887, are not worded in the edition of 1907 of the Supreme Ruling *fo* the Fraternal Mystic Circle filed as Exhibit "B" to the answer in this cause; but the petition for membership by said Snyder on the 1-th of November 1887, and filed in this cause, shows for itself the contract made between the parties and the liabilities assumed by each as to such misstatements.

The first suicid*d* clause passed by the Fraternal Mystic Circle is contained in the edition of its Constitution and Laws for the year 1888, and is found in Law III, Section 2, and reads as follows:

The death of any member by his own hand, whether sane or insane at the time, whether the act *ne* voluntary or involuntary is a risk not assumed by this order. In such an event the order is to pay a sum equal to the benefit assessments with interest, paid by such member, in full payment and settle-ent of his certificate of membership by the Supreme Executive Committee, if in their judgment the circumstances attending the suicide warrant it, may at their option, without prejudice, pay a greater sum, or the full amount of said certificate."

In or about the year, 1892, Law III, Section 2, as to suicide was amended, to read as follows:

"The death of any member by his own hand, whether sane or insane at the time, whether voluntary or involuntary, at any time prior to his having been a beneficial member *for* three years is not
122 a risk assumed by this order. In such an event the Order shall pay a sum equal to the benefit assessments, with interest paid by such member, in full payment and settlement of his certificate of membership; but the Supreme Executive Committee, if in their judgment the circumstances surrounding the cause of suicide warrant it, may at their option (without prejudice) pay a greater sum or the full amount of such certificate."

The suicide law remained as above until June 1901, when it was changed to read as follows:

"No benefit Certificate issued to a member whose death is caused by his own hand, whether sane or insane at the time, whether the act be voluntary or involuntary, within five years from the date of such certificate, shall create any liability or be payable in whole or in part, to the designated beneficiary. In such an event the Order shall pay a sum equal to the assessments with interest, paid by such member, in full payment and settlement of his certificate of membership; but the Supreme Executive Committee if in their judgment the circumstances attending the cause of suicide warrant it, may at their option (without prejudice) pay a greater sum, or the full amount of such certificate."

This provision remained the same as above until July 1907 when it was changed as to read as shown by the edition of the Constitution and Laws of 1907, Article *v*III, Section 3 page 78.

On or about June 25th, 1904, the Supreme Recorder received the le*y*y*e*r filed as Exhibit "A" to the answer of the defendant in this cause.

This letter was answered by F. H. Duchwitz, Supreme Mystic Ruler, June 28th, *k*904, a copy of which is attached hereto marked Exhibit No. 1."

August 8th, 1904 a letter was received by F. H. Duchwitz signed "Mrs. Znnie Snyder" the original of which is attached hereto marked Exhibit "No. 2."

This letter was answered by Mr. Duchwitz August 11th, 1904, a copy of which is attached hereto marked Exhibit "No. 3."

123 On or about June 1st, 1908, proofs of death of Chas. C. Snyder at Brooklyn, N. Y. were received by the defendant and they are hereto attached marked Exhibit "No. 4." These proofs

of death in connections therewith the claim made by Annine Snyder, as beneficiary under the certificate held by Chas. C. Snyder, were first considered by the Supreme Executive Committee on June 19th, 1908. The duties and power of the Supreme Executive Committee as constituted by its Charter Constitution and Laws, are set forth in the pamphlet filed as Exhibit marked #5."

Meanwhile, proofs of death had been submitted to the Supreme Medical Director for consideration and after examining the Claim, the Supreme Medical director rejected it under the date of July 1st, 1908, as per endorsement on back of proofs filed as Exhibit No. 4.

F. S. Wagenhaes, whose endorsement appears on the back of said proofs was then Supreme Medical director.

Under date of June 26th, 1908, Mr. Annie Snyder wrote the undersigned a letter, which is hereto attached marked No. 6. This letter was referred to the General Counsel and *and* was answered by him and a copy of his answer is attached marked Exhibit "Z".

Several affidavits were subsequently filed by the beneficiary and considered by the Supreme Executive Committee, at a meeting held July 17th, 1908 (The date set for the hearing of the claimant). At this meeting this meeting was continued until August 7th, 1908. On the latter date the same affidavits together with others received meanwhile, were considered by the Supreme Executive Committee; and the Committee being unanimously of the opinion that the evidence submitted was not sufficient to establish the validity of the claim—then rejected the claim—that is, August 7th, 1908. The affidavits submitted by the beneficiary as hereinbefore stated, are hereto attached marked Exhibits Nos. 7 and 8. A copy of the records showing the action of the Supreme Executive Committee on said claim is filed herewith marked Exhibit "Y."

124 The claimant, Mrs. Annie Snyder, was notified of the rejection of her claim, under date of August 10th, 1908, as per copy of letter hereto attached marked No. 9.

The general counsel for the defendant, Mr. F. M. Duchwitz, also wrote Mrs. Snyder more fully in regard to this action under date of August 11, a carbon copy of which communication is hereto attached Marked "No. 10."

The records fail to show that no appeal was taken by the beneficiary from the decision of the Supreme Executive Committee to the Supreme Ruling and none in fact was taken by her, or on her behalf, but suit was instituted instead.

The defendant order knows nothing and never heard anything of Mrs. Snyder paying the dues and assessments of Chas. C. Snyder until the letter of June 25th, 1904, was received, and which is hereinbefore referred to. The dues and assessments are paid by the members to the duly authorized collector of the Ruling of Lodge to which the member belongs. The collections are subsequently forwarded to the Supreme Ruling by the Worthy Collector at the beginning of each month. The Supreme Ruling had no knowledge of who makes the payments to the Worthy Collector.

There was no express authority, other than such as the laws of the Order confer, if any given to F. H. Duchwitz who was Supreme

Mystic Ruler on June 25th, 1904, or to any one else by the defendant Order, or by any of its constituted authorities to waive in this particular instance the provisions of Section 14, Law I, as contained in Constitution and laws of Supreme Ruling of the Fraternal Mystic Circle of the edition of 1907, and which provision has been in force since June, 1901.

There was no session of the Supreme Ruling held in 1904.

It is agreed that if F. H. Duchwits, if sworn as a witness, would testify that at the time he wrote letters Exhibit "I" and Exhibit "3" of the dates of June 28th, 1904, and August 11th, 1904, he was in forgetfulness of the laws of the Order with reference
125 to the status of a divorced wife, which laws are set forth and referred to in the foregoing agreement and in the Exhibits therein referred to.

It is further agreed that the Constitution and Laws of the Supreme Ruling of the Fraternal Mystic Circle, and the Constitution of the Subordinate Rulings, Edition of 1907, and filed as Exhibit "B" in this cause, are now the Constitution and Laws of said Rulings in full force and effect.

PRITICHARD AND SIZER,
Sol's for Comp'ts.
SNODGRASS AND LATIMORE,
Sol's for Def'ts.

Number One (1).

Filed April 13th, 1909.

JUNE 28TH, 1904.

Mrs. Annie C. Snyder, 417 Cedar St., Chattanooga, Tenn.

DEAR MADAM: Replying to your inquiry of the 25th inst., will say: that the certificate in question was issued to Chas. C. Snyder December 23rd, 1887, for $3,000.00, in which his wife Annie, and in case of her prior death, his children, were named as beneficiaries. Under the laws of our Order a member has the absolute right yo change his beneficiaries at any time so long as the beneficiaries designated by him come within class first or second described in Section 8 of Law No. 1; namely; that the beneficiaries must be either a blood relative or a dependent. As the certificate now stands, it would be payable on his death provided of course, that the assessments were paid up, payable to you, and in the event of your death to his children. I assume from what you write that yo- are in possession of the certificate. If so, it might be difficult for him to secure a new certificate unless he should take the position that the old certificate was lost and he would make affidavit to that effect, which would, under our law, entitle him to a new certificate.
126 If you desire any further information in refernece to the subject matter, write me and I will give you all the information at my command.

Yours sincerely,

F. H. DUCHWITZ,
Supreme Mystic Ruler.

Dct. to P.

Number Two (2).

Filed April 13th, 1909.

CHATTANOOGA, TENN., *August 8th*, 1904.

F. H. Duchwitz, Philadelphia, Pa.

DEAR SIR: In reply to your favor of June 28th, I wish to say regard to your suggestion that the certificate might be changed provided the old certificate was lost or destroyed. I have the certificate in my possession and intend to keep it. If any one tries to change the beneficiary saying that the certificate is lost or destroyed, be kind enough to communicate with me beofre you take any action in the matter. I fear that an attempt of this kind will be made and write you so as to prevent any trouble. My address is znd will be until you are further advised, 417 Cedar St., Chattanooga, Tennessee. Please acknowledge receipt of this.

Thanking you for your kindness in the matter, I remain.

Yours respectfully,

ANNIE SNYDER.

Number Three (3).

Filed April 13th, 1909.

AUGUST 11TH, 1904.

Mrs. Annie Snyder, Chattanooga, Tenn.

DEAR MADAM: As per your request, I herewith acknowledge receipt of your letter of the 8th inst. I will file your letter with the petition for membership in order that our clerks may read your request to be notified of any application for change of
127-170 beneficiary etc.

Yours very truly,

F. H. DUCHWITZ,
Supreme Mystic Ruler.

Dct. to P.

* * * * * * *

171 *Final Decree.*

Enrolled April 15th, 1909.

172 No. 11317.

Mrs. ANNIE SNYDER
VS.
SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE.

This cause came on to be heard and finally determined before the Hon. T. M. McConnell, Chancellor, on this the 15th day of

April, 1909, on the pleadings, proof, exhibits and entire record of this cause including agreement of counsel filed with regard to decree with depositions.

From all of which the Court is of the opinion and so adjudges and decrees that complainant is entitled to recover on the policy sued on the principal thereof, to-wit: the sum of $3000.00, and interest thereon from August 17th, 1908, the date of the filing of the original bill, to the date of this decree, being the sum of 119.00. The Court is of the further opinion and adjudges and decrees that the refusal of the defendant to pay the complainant the — stipulated for in said policy or benefit certificates was not in good faith and that such failure has inflicted additional loss, expense and injury upon complainant as the owner and holder of said certificate; that defendant refused to pay said amount for more than sixty days after demand for payment was made by complainant prior to the filing of her original bill; and that complainant is entitled to recover on account of such additional expense, loss and injury, 25% of the principal amount stipulated for in said policy or the sum of $750.00 in addition to the principal and interest on said policy, the Court being of opinion and so adjudging that said amount would be reasonable compensation and reimbursement to the complainant for her said loss, expense and injury.

It is therefore ordered, adjudged and decreed that Complainant Mrs. Annie Snyder have and recover of defendant, the Supreme Ruling of the Fraternal Mystic Circle the said sum of $3000.00 and the said sum of $119.00 as interest thereon as aforesaid, and the further sum of $750.00 as compensation for the loss, expense and injury sustained by complainant on account of the defend-
173 ant's refusal to pay said policy, making in all the sum of $3869.00 and all the costs in this cause for which execution will issue.

From the foregoing decree defendant prays an appeal to the next term of the Supreme Court to be held at Knoxville, Tennessee, which is granted on the execution of the defendant of appeal bond in the penalty and conditioned as required by law; and it appearing that the defendant is a non-resident of the State, it is allowed thirty days from the entry of this decree in which to make and file its said appeal bond.

On the hearing of the cause the defendant read in evidence the final decree of this Court in the divorce case of Mrs. Annie Snyder vs. Chas. C. Snyder tried and determined in this Court at a former term; and said decree be copied into the transcript of the record in this cause when the same is sent to the appellate Court.

It is further ordered by agreement of counsel, that the original Benefit Fund Certificate filed as Exhibit "A" to complainant's original bill, the petition to the Fraternal Mystic Circle filed as Exhibit C to the answer of the defendant and the book containing the Constitution and by laws of the defendant be filed as Exhibit "B" to defendant's answer in the cause, be sent up as parts of the record without being copied.

Certified Copy of Divorce Decree Mrs. Annie Snyder vs. Chas. C. Snyder.

Enrolled Tuesday, June the Fourth (4), 1901.

At a Special Term of the Chancery Court of Hamilton County, Tennessee, begun and held in the Court House in the City of Chattanooga, said County and State, on Tuesday, June 4th, 1901, present and presiding the Hon. T. M. McConnell, Chancellor in and for the Third Chancery Division of said State, the following proceedings were had, viz:

No. 9023.

ANNIE SNYDER
vs.
CHAS. C. SNYDER.

174 Be it remembered that this cause came on for final hearing before the Hon. T. M. McConnell, Chancellor, on this the 4th day of June, 1901, upon the original bill, the answer of the defendant and oral proof heard by the Court; from all of which it appears to the Court that the compalinant is entitled to the relief sought by her bill.

It is therefore ordered. adjudged and decreed that the bonds of matrimony heretofore subsisting between Complainant Annie Snyder and the Defendant Chas. C. Snyder be, and the same are, dissolved and for nothing held, and the complainant be and is restored to all the rights of an unmarried woman.

It is further decreed that Complainant be, and she is hereby given the care, custody, raising and control of the childred, issue of said marriage, viz: Bernard Cyrus Snyder, Wm. Royal Snyder, Chas. Stanley Snyder and Raymond Shannon Snyder.

It is further decreed that Complainant is, entitled to the furniture described in said bill, consisting of one bed-room set; one dining table and chairs; one parlor set of furniture; one hat rack; one cabinet; one child's bed; one wardrobe; and in fact, all of the furniture pledged and hypothecated with Fred Frawley, subject to the rights of said Frawley therein, and all the right, title, claim and interest of defendant C. C. Snyder in and to said fu-niture is divested out of him and vested in complainant, subject to the rights of said Fred Frawley in said furniture.

It is further decreed that complainant recover of defendant all the costs of this cause, for which execution is awarded; and all matters involved in this litigation being settled, this cause is stricken from the docket.

Appeal Bond.

Filed 12th Day of May, 1909.

Know all men by these Presents, That we the Supreme Ruling of the Fraternal Mystic Circle as principal and American Bonding Co. as surety *and* held firmly bound unto Mrs. Annie Snyder in the sum of Forty four hundred Dollars, to the payment of which well and truly to be made and done, we bind ourselves jointly
175–186 and severally our heirs, executo*es* and administrators, firmly by these presents.

Sealed with our seal*d*, and dated the 12th day of May One thousand Nine Hundred and nine.

The condition of the above obligation is such, That whereas in the above stated cause the said principal obligor has prayed an appeal from a decree of said Court, rendered at the March term thereof 1909, to the ne*x*t term of the Supreme Court to be held at Knoxville, Tennessee on the second Monday of Septem*p*er next, which to it was granted on bond, with security being given thereon as required by law, in the sum of $4400.00 and said principal obligor desiring to perfect said appeal executes this bond.

Now should the said principal obligor well and truly with effect prosecute said appeal, and abide by and perform all orders and decrees of said Supreme Court in relation thereto in the premises then the above obligation to be void, otherwise to be and remain in full force and virtue.

THE SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE,
By T. C. LATIMORE, *Att'y.* [SEAL.]
AMERICAN BONDING COMPANY OF BALTIMORE, [SEAL.]
By N. H. GRADY, [SEAL.]
Attorney in Fact.

[SEAL.]

187 * * * * * * *

Defendant appeals and assigns as error that in all respects this decree is erroneous.

(1) Upon the facts already quoted it appears that the health of C. C. Snyder, the insured, had become impaired by the use of narcotics, his death having finally resulted therefrom as stated, and that under the laws of his contract, the constitution and by-laws of defendant, complainant, was, for this reason, not entitled to recover.

(2) That the Supreme Medical Examiner had decided this affirmitively and there was *ho* reversal of his decision by appeal or otherwise and it is binding and conclusive as part of the contract of complainant: the constitution and by-laws being as much a part of his contract as if incorporated literally therein.

(3) The decree is erroneous in holding that a *divorced* wife can

be a beneficiary as the same constitution and by-laws provide the contrary.

Trans. Origina. Cons. & By-laws, sent up by agreement. P. 36-37, §14 lines 1 to 22.

(4) In holding the defendant Ruling estopped to make this question, because Mrs. Snyder was misled by the letter of defendant's Supreme Ruler. No such effect can be given to that letter. It is not an estoppel at all, but if it were, it could only be such as to loss she had sustained in paying assessments, and this we have tendered back to her, which is the utmost relief she could claim.

(5) There was an error in applying the penalty Act, of
188 1901 to this case and adding 25 per cent to her recovery.

The defence is not only in good faith, but we think it manifestly a good defence. The Act, first, has no application to a defence of this kind, and in this case, and second, whether it does or not is unconstitutional and void.

The contract between this defendant and C. C. Snyder was made in 1887.

The Act. was passed in 1901, "to impose an additional liability" on this Company or Ruling. It impairs the obligation of their contract and is void.

Const. of Tenn. Art 1, Sec. 20.
" " " Art. 2, Sec. 2.
Const. U. S. Art. 1, Sec. 10.

189 *Contract, Constitution and Laws of the Order.*

The petition for membership provides, among other things that the policy shall be issued "subject to such future disposal of the benefits, among my dependants, as I may hereafter direct, in compliance with the laws of the Order * * * ."

"I further agree that this Order shall not be responsible under this contract, if my health shall become impaired by the use of narcotics, or alcoholic, vinous, or malt liquors."

"I agree to make punctual payment of all dues and assessments for which I may become liable, and to conform in all respects to the Laws, Rules, and Usages of the Order now in force or which may hereafter be adopted by the same."

The policy itself provides thus, "and the statements certified by said petitioner to the Worthy Medical Examiner, both of which are filed in the Supreme Recorder's office, be made a part of this contract, and upon condition that the said members complies, in the future, with the laws, rules, and regulations now governing the said Ruling and Fund, or that may hereafter be enacted by the Supreme Ruling to govern said Ruling and Fund. These conditions being complied with, the Supreme Ruling * * * promise and binds itself, etc."

Objects and Purposes.

"And for the payment of such sums of money to the family or heirs, widows, orphans and dependants of deceased Beneficial Mem-

bers, and to those of its Beneficial Members who may become permanently disabled by disease, accident or age, as hereinafter limited and provided for, the funds therefor to be raised by donation, mutual contribution or assessments levied upon its members as hereinafter provided for."

Const., art. II, sec. 5, lines 14-19.

Application—Contained What?

"Every candidate for membership shall execute a petition
190 therefor upon blanks furnished by the Supreme Executive Committee, agreeing to conform to and be governed by the constitution, Laws, Rules and Regulations *if* the Supreme Ruling of the Fraternal Mystic Circle and all amendments thereof."

Law I, sec. 9 and 10, 99, 35-56, lines 1-7; Const., p. 64, lines 12 & -3.

Beneficiaries—Who May Be?

"If at the time of the death of a member, who has designated as his beneficiary a person of Class Second, (dependants other than those in Class First) the dependency required by the laws of the Order shall have ceased, or should be found not to have existed, or if the designated beneficiary is a husband or wife, and they should be divorced upon the application of either party, or if the designated beneficiary is an affianced husband or affianced wife and their engagement ceases before marriage, or if any designation should fail for illegality or otherwise, then the benefits shall be payable to person or persons mentioned in Class First, Section 11, Law I, if living, in the shares and order of precedence by grades as therein enumerated, the persons living of each preceeding grade taking, in equal shares per capita, to the exclusion of all persons living or of subsequently enumerated grades: except that in the distribution among persons of Grade Second the childred of deceased childred shall take by representation the shares the parent would have received, if living. If neither one of said First Class should be living at the death of the member, the benefit shall revert to the Order."

P. 37, Law I, sec. 14, lines 1 to 24.

P. 36, Class First, Section 11, Law I, is designed as follwos:

Class First.

Grade 1st, Member's wife *of* husband?
Grade 2nd. Member's children.
Grade 3rd. Member's grandchildren.
Grade 4th. Member's parents.
Grade 5th. Member's brothers and sisters of whole blood.
Grade 6th. Member's brothers or sisters of half-blood.
191 Grade 8th. Member's neices and nephews.
Grade 9th. Member's cousins in first degree.

Grade 10th. Member's aunts.
Grade 11th. Member's uncles.
Grade 12th. Member's next kin who would be distributees of the personal estate of such member upon his death intestate.
Grade 13th. Member's affianced husband or affianced wife.

Class Second is here quoted not that it is material to this controversy, but mer-ly to show that a beneficiary must be dependant. It is as follows:

"Any person who is dependant upon the member for maintenance (food, clothing, lodging or education), in either of which cases written evidence of the dependency, within the requirement of the Laws of the Order, must be furnished to the satisfaction of the Supreme Recorder before the Benefit Certificate can be issued."

Class II, Law I, p. 36, lines 25 to 32.

Use of Narcotics, ets.

"If a member's health shall become impaired or death result directly or indirectly from the use of opiates, cocaine, chloral or other narcotic poison, or alcoholic or vinuous or malt liquors; or in case at the time of death *of* the member shall be addicted to the excessive use of alcoholic or vinous or malt liquors, and upon this question the Supreme Medical Examiner's decision shall be binding and conclusive or from a disease resulting from his or her vicious or immoral act or acts, or in consequence of the violation of any law of the State or of the United States or any other province or nation, in either of which cases the Benefit Certificate shall be null and void and of no effect, and all money which shall have been paid shall be forfeited to the Order, and all rights and benefits which may have accrued on account of his Certificate shall be absolutely void without notice or service. The knowledge of any officer or any member of a Subordinate Ruling that a member thereof has become intemperate or uses opiates, cocaine, chloral or other narcotics or poison to such an extent as to impair his or her health or produce delirium tre-
192 mens, or has violated any of the provisions of these laws, or the receipt by the Subordinate Ruling of dues and assessments, shall not in any manner make the Fraternal Mystic Circle liable on his or her Benefit Certificate when by these laws the Certificate is made null and void and *and* all rights as a member forfeited.

Law VIII, p. 77, sec. 1, lines 15 to 45.

Violation of Law Cannot be Authorized by Supreme Mystic Ruler.

"The Supreme Mystic Ruler shall preside at all meetings of the Supreme Ruling and Supreme Executive Committee, and enforce the laws of the Order, with power to grant dispensations when the good of the Order may require it, except for the admission of unqualified persons to membership, or to authorize a violation of the

laws of this Order, or to legalize a willful violation of such laws. His decision upon all questions of law shall be final during a recess of the Supreme Ruling.

Const., p. 13, art. XI, sec. 1, lines 1-11.

"No officer, employé or agent of the Supreme Ruling, or of any Subordinate Ruling, has the right, or authority to waive any of the conditions of the Benefit Certificate, or to change, vary or waive provisions of the Constitution and Laws of the Fraternal Mystic Circle. Each and every Benefit Certificate is issued only upon the conditions stated in and subject to the Constitution and Laws.

The Constiturion and Laws of the Supreme Ruling of the Fraternal Mystic Circle now in force, or which may hereafter be enacted, the application for membership and the Benefit Certificate shall constitute the contract between the Fraternal Mystic Circle and the member.

Const., p. 64, lines 12, &c.

In case of any controversy as to the rights of a member, or after his death of his beneficiary or beneficiaries, the laws as they exist at the time such controversy arises shall govern and
193–242 determine the rights of such member, or his beneficiary or beneficiaries."

Law III, p. 64, sec. 8, lines 1-21.

* * * * * * *

243 *For Publication.*

Filed December 4th, 1909. S. E. Cleage, Clerk.

Mrs. Annie Snyder
vs.
Supreme Ruler of the Fraternal Mystic Circle.

Beard, *C. J.:*

The defendant, is a corporation duly organized under the laws of the state of Pennsylvania, with its principal office in the city of Philadelphia, in that state, and with subordinate lodges, or agencies, located in different states of the Union. The corporation is social and benevolent in character, its object, as indicated in its charter, being to "unite fraternally white persons of proper age and good social and moral character * * * for beneficial and protective purposes, collecting dues and assessments from its members, to provide for the payment of its members, or their families, widows, heirs, blood relatives, or other dependants benefits in case of sickness, disability, or death of its members, in compliance with its constitution, laws and regulations."

On the 23rd of November, 1887, the corporation issued to Chas. C. Snyder, a resident of Chattanooga, and a member of one of its lodges, a benefit fund certificate, or policy, by which it bound itself,

on certain conditions therein set forth, at the death of the assured, upon the proof thereof, to pay to the present complainant, at that time and for many years thereafter his wife, or, in case of her death prior thereto, to his children, a sum not exceeding $3000.00.

On, or about, the first of May, 1908, Chas. C. Snyder died, in Brooklyn, New York, where he was then domiciled, and soon thereafter proofs of loss were furnished by complainant to the defendant and payment of the certificate was demanded by her. This demand being refused, the present bill was filed.

244 The defenses to this claim, set up in the answer are:

First. That it had been determined by the Supreme Medical Examiner of defendant Corporation, whose determination of the question, under the laws of the association was final, that "the health of the assured had become impaired and his death was caused directly, or indirectly, *by* the use of narcotics," and the assured had stipulated in the application, on the faith of which the certificate was issued, that in such case the defendant should "not be responsible under the contract."

Second. That the complainant had been divorced from the assured prior to his death, and by the express terms "of the constitution and laws of the Order" was *ipso facto* excluded from all further interest in this certificate.

The record shows, that many years after the issuance of the certificate in question, the complainant obtained a divorce from the assured, and was given the custody and control of the children born of their marriage, and afterwards, towit, on the 25th of June, 1904, that she wrote defendant a letter, in which she advised the defendant of this divorce, and that for ten years prior thereto she had paid the assessments on this certificate, and making inquiry as to whom the money provided for therein, in the event the assessments were kept up, would be paid on the death of the assured. To this letter, under date of June 28, 1904, F. H. Duchwitch the Supreme Mystic Ruler—the highest officer of the Association and in charge of its affairs as such—made a reply to the complainant, in which he said, in substance, that under the laws of the order Charles C. Snyder, being a member, had "the absolute right" to change the beneficiary, within certain limitations; that "as the certificate now stands" it would be payable, on his death, to the complainant, "provided of course that the assessments were paid up," and in case of complainant's death "to his children." This letter concludes with the following paragraph: "I assume from what you write that you are in possession of this certificate. If so it might be difficult for

245 him to secure a new certificate, unless he should take the position that the old certificate was lost and he would make affidavit to that effect, which, under our law, would entiele him to a new certificate."

To this letter the complainant replied, under date of August 18, 1904. In this reply she stated as follows: "I have the certificate in my possession and intend to keep it. If, any one tries to change the beneficiary, saying that the affidavit is lost or destroyed, be kind enough to communicate with me before you take any action in the

matter * * *". In response to this letter the Supreme Mystic Ruler wrote complainant that he would file her letter with the petition for membership in order that the clerks of the association might be advised of her request, "to be notified on any application for change of beneficiary."

Following this corr-spondence, and replyin- on the statements of the chief officer of the corporation as to her rights in the premises, complainant, as shown by herm with much sacrifice, continued to pay all assessments, or dues, on this certificate up to the death of her former husband, on the 1st of May, 1908.

As has been stated, proofs of loss were promtly submitted by the complainant soon thereafter. In these, in answer to the question as to the cause and manner of his death, she stated it was due to suicide by "inhalation of illuminating gas." In response to a request to state the habits of the deceased "with reference to the use of spirituous or fermented liquors," she replied, "he did drink prior to leaving Chattanooga," and in answer to the question, "did the deceased use morphine, opium, chloral, or other drugs or narcotics," she said "I think he used morphine."

On receipt of these proofs the Supreme Recorder of the defendant corporation wrote complainant informing her that her claim was "not on its face a valid one," and that in accordance with the constitution and laws of the Order an opportunity was given her to appear before the Supreme Executive Committee and present
246 such evidence as she might have to establish its validity. In this letter there was set out a copy of resolutions passes by that committee, in which was recited provisions of the laws of the Order, to the effect that no benefit should be paid on account of the death of any member when his health had become impaired, or death had resulted directly or indirectly, from the use of opiates or aldoholic, vinous, or malt liquors; or when, at the time of his death, the member shall be addicted to the excessive use of alcoholic, vinous, or malt liquors. It was then stated in one of the resolutions that "from the proofs of death presented it appears that Charles C. Snyder was at the time of his death addicted to the excessive use of narcotics, or alcoholic, vinous, or malt liquors, on which account the claim presented by his beneficiary should not be approved." The resolutions then provided that the complainant "shall appear in person, of by attorney, or both, before the Supreme Executive Committee at the office of the defendant in Philadelphia, Penn. on Friday, July 17, 1908," and "offer further proof in support of her claim as she may deem necessary, or advisable.

In answer to this letter, Mrs. Snyder wrote the Supreme Recorder, that if Mr. Snyder's health had become impaired by the use of liquor, or if he was accustomed to use of narcotics, she did not know it and did not intent so to state in the proofs of death; that Snyder had been away from Chattanooga for a number of years, and she had no personal knowledge of his personal habits, but when she saw him last he showed no evidence that he used narcotics, or that his health had become impaired by the use of intoxicating liquors. She stated further, that it was impossible for her to appear in Philadelphia,

either in person or by an attorney, on July 17th, but that she would send such statements as she could before that date, and requested that a copy of the proofs she had furnished be sent her.

In answer to this letter the Supreme Mysric Ruler wrote complainant: "We are unalbe to furnish you a copy of the proofs
247 of death, as they are on file with the Supreme Medical Director, at Columbus". He stated that "upon investigation we found that Mr. Snyder was a morphine and cocaine fiend, and that after his death many vials labeled cocaine, morphine and chloroform, were found in his rooms. We also ascertained that he used alcoholic liquors to excess, and that he had been a heavy drinker for more than fifteen years before he went to Brooklyn, New York. Further; that he was again married in Brooklyn, in July, 1904, and that the widow his last wife, is living". He then called complainant's attention to the agreements in the "application *fro* beneficial membership" made by Snyder, to the effect that "if his health should become impaired, or if he should die from the excessive use of "liquors, narcotics etc., the defendant would not be liable on the certificate, and stated that complainant might submit such proofs as she was able to secure tending to establish the justness of her claim by affidavits, or other documentary evidence, and suggested that she also furnish a certified copy of her decree of divorce from Chas. C. Snyder. In conclusion, the letter states that "any proof that you may submit will receive careful consideration by the Supreme Executive Committee."

Soon after this, and in obedience to the suggestion made, the complainant secured and sent to the defendant, at its office in Philadelphia, the affidavits of twenty one different persons, who claimd to have known the deceased intimately during a portion of or all the years that he lived in Brooklyn, and who stated that during their acquaintance with him his habits were temperate in the use of intoxicants and that from their association with him and to the best of their knowledge he did not use narcotics. In addition she submitted her own affidavit in which, among other things, she stated that she had not seen nor talked with Snyder, or had any correspondence with him from the time she obtained her divorce, in June 1901, up to the date of his death, in May 1908, and that she knew nothing about his habits during that period; that he
248 never drank nor used narcotics to such an extent as to impair his health during the time she knew him, and if he used either after the separation she did not know it; and that she did not intend, by anything she said in the proofs of loss, to indicate that she knew what his habits were. She also set out in detail the information that she had as to the circumstances attending his death, from which she drew the conclusion, as she says, that the assured committed suicide because of his financial troubles and disappointment over the failure of his eldest son to go to New York and live with him.

On August 10th, 1908, the Supreme Recorder wrote complainant that her claim "as the alleged beneficiary" under the certificate in question had been rejected by the Supreme Executive Committee

"as not being a valid one under the constitution and laws of the Order and contract of membership": and on the day following the general counsel, wrote complainant, at length, explaining the action which had been taken. He stated that the Supreme Executive Committee "after careful consideration of all the proofs presented decided that the defendant was not liable on the certificate" for the reason "that said member- (Chas. C. Snyder) death was due solely and wholly to the excessive use of morphine and other opiates". He then referred to the correspondence which had taken place between himself as Supreme Mystic Ruler and complainant, in June 1904, already referred to, and stated in substance, that under the laws of the Order no divorced wife could be a beneficiary, and that, therefore, she could not be a beneficiary under the certificate in question, even if the claim had been a valid one.

Leaving out of view, for the time being, other matters for consideration, the first question presented is—is the complainant as the divorced wife of Chas. C. Snyder entitled to recover on this certificate? It is insisted by the defendant that she is not, and to sustain this insistence the charter, the constitution and by-laws of the Order, and certain authorities are invoked.

249 That the complainant was rightfully a beneficiary at the time of the issuance of this certificate, and continued to be such to the date of her divorce, is beyond question. After the divorce was obtained, the beneficiary was not changed by the assured, as he had the right to do under the laws of the Order, and the defendant corporation continued the certificate in her name, and, with the full knowledge of the divorce she was encouraged by its chief executive officer to believe that, in the event of the death of the assured without change, if dues and assessments were paid by her, she would be entitled to receive the money provided for in the certificate upon proper proofs of loss. Accepting the assurance of the Supreme officer of the corporation to be made in good faith, she continued to pay these dues and assessments up to the death of C. C. Snyder. Certainly on these facts there is a strong equity in her favor, which the defendant should not be permitted to repel unless it can interpose some legal objection which a court is without power to disregard.

It will be observed, in reading that portion of the charter which affects this question, hereinbefore set out, that only in general terms is the "object" of the corporation set out, that is, the collection of dues and assessments "from its members to provide for the payment due its members, or their families, widows, heirs, or other dependent-, benefits", in case of "sickness, disability, or death".

It may be conceeded that, if the charter had in express terms restricted the application of the benefit fund to the classes named, or, in other words, had affirmatively provided that it should be appropriated to none others, then it might be argued that payment to complainant upon her personal claim, as the divorced wife of the assured, could not be enforced. In such a case we can *wekk* understand that a recognition of the claim of the divorced wife by the Superior Officer of the Order, followed by the receipt of assessments by it, would not

avail to repel the defense of *ultra vires*. The authorities
250 largely relied upon by the defendant corporation announce and enforce this principle.

But, there are no restrictive words in this charter. At the time of the issuance of the certificate to Chas. C. Snyder the complainant was his wife, and, as such, had an insurable interest in his life. The defendant issued the certificate payable to her as such wife, as unquestionably it had the power to do. Its charter made no provision for a forfeiture of her rights as beneficiary in the event of her divorce from the assured. No demand was made by the defendant for a surrender of this certificate on account of the changed relations of the beneficiary to the assured, and no alteration was made in it and no intimation was given to her that she had after her divorce, no claim on the order. To the contrary in recognition of her *an* existing interest, and with full knowledge that she no longer sustained the relation of wife, its Supreme Mystic Ruler, induced her to continue payment of dues and assessments on this certificate, at the expense of much personal sacrifice, and the defendant received and appropriated the sums so paid for a terms of years and until the death of the assured. Certainly, we repeat, if there is any sound ground for an equitable estoppel, upon which this claim can be rested, then it should be found and complainant given relief.

It is true that some authorities can be found which hold with the contention of the defendant that in the face of even such general terms, lacking words of limitation, or description, as are to be found in this charter, it would be an unauthorized diversion of a trust fund to award the money, represented by this certificate, to the complainant. The Courts in which this class of cases are found have adopted a rigid rule of construction (1 Bacon on Benefit Societies, ss. 243-4-5). On the other hand other courts hav*d* adopted a "more liberal view" and, as we think, altogether a more reasonable one, and with these this Court, as is said in Manly vs. Manly, 107 Tenn. 191, has ranged itself.

That case involved a controversy between the surviving mother of a deceased member of an order, known as "The Brother-
251 hood of Locomotive Firemen", and his widow and children, as to a fund represented by a certificate issued to the member and payable to his mother. It was there insisted, by the widow, for herself and children, that the fund from which the claim in question was paid was "established to provide substantial relief to members of their families, in the event of death or total disability", and that the mother of the deceased was not within the classes provided for. The provision just quoted constituted a part of section 47 of the constitution of that Order.

In reply to this insist*a*nce, it was said by the Court: "It will be observed that there are no restrictive words in section 47. The terms used are general and declares the purpose for which this beneficiary department is established, without fixing or undertaking to fix beyond recall, a class to which, in case of death of a member, the money provided for must of necessity go. While the clear implication is, that the fund raises is for the "substantial relief of mem-

bers and their families, in the event of death or total disability", yet there are no words depriving the member of the right to designate any member of his family he may see proper as a beneficiary, or which gives one member of his family a fixed right superior to that of another." It was held that the mother was entitled to the benefit of that fund.

Among the cases referred to as supporting the conclusion of the court is that on Manly vs. Knight of Birmingham, 115 Penn. St. 305, in which the same liberal construction was given to a charter clause of one of these beneficial associations, which stated that the purpose of the corporation was the maintenance of a society to benefit "the widows and orphans of deceased members". A person other than a widow, or orphan, of a deceased member to whom a certificate had been issued, when demanding payment was met by a defense that the contract was *ultra vires,* and it was so held by the lower court. In reversing this judgment, it was said: "We think this is too narrow and strained a view to take of this section
252 of the charter. While it is true, that the general purpose of the corporation is there stated, * * * it must be observed that this is only the statement of a general purpose * * *. There is no prohibitory or restrictive language excluding the power of the corporation the right to contract especially with the member of the family or benefit to other persons than his widow, or orphans." Supporting this view are to be found many cases. Among these may be cited Lane vs. Lane 99 Tenn. 639; Alfsen vs. Crouch, 115 Tenn. 352; White vs. Brotherhood of American Yeomen (Iowa 1904) 66 L. R. A. 164; Sheehan vs. Journeymen, 142 Cal. 489; Benefit Society vs. Blue, 120 Ill. 121; Lindsay vs. Western Mutual Aid Society, 84 Iowa, 734; Story vs. Williamsburg etc., Mutual Benefit Asso. 95 New York, 474.

It is urged, however that one of the laws adopted by the defendant, and in existance at the time of the issuance of the certificate to C. S. Snyder, provider that "if at the time of the death of a member, who had been designated as his beneficiarry, a person of class second (in the present case the wife) the dependency required by the Laws of the Order shall have ceased * * * or, if the designated beneficiary is a husband or wife, and they should be divorced upon the application of either party * * *, then the benefits shall be payable to person or persons, mentioned in class first, section 11 law 1, if living * * * " and that this provision necessarily defeats the claim of complainant. We think the answer to this contention is, that the Order which made this law could waive it, and that by the receipt of assessments and dues by the defendant after the divorce, and with full knowledge of that fact it was waived. It is true, that Mr. Duchwitch, the Supreme Mystic Ruler, states, that in a moment of forgetfulness, as to this provision, he wrote the letter to the complainant of date June —, 1904, hereinbefore referred to. We grant that he was not able, by virtue of his position as chief executive of this order, either by direction or indirection, to set aside or suspend the operation of one of its laws. But, this is not the point.
253 His knowledge of the divorce secured by the complainant, was that of the association, and its receipt of assessments and dues thereafter constituted the waiver in law insisted upon.

There is another ground, however, which we regard as conclusive on this point as against the defendant. It will be seen from the statement, hereinbefore made, that the representatives of the Order did not decline to pay this claim because of the divorce of the complainant from Chas. C. Snyder, the assured, but on the other and distince ground that his "death was due solely and wholly to the excessive use of narcotics, alcoholic, vinous and malt liquors, and the excessive use of morphine and other opiates". Having taken this ground with knowledge of this provision in its laws, and of the fact of the divorce, it is now estopped to assert this latter fact as being a forfeiture of complainant's interest in this certificate. 3 Cooley's Insurance Briefs, page 2680; Insurance Co. vs. Thornton, 97 Tenn. 1; Insurance Co. vs. Hancock, 106 Tenn. 513. Smith vs. German Insurance Company, 107 Mich. 270; McCormick vs. Insurance Co., 163 Penn. St. 184.

Tjis is but the application to insurance cases of the well established rule, "that when a party gives a reason for his conduct and decision touching anything involved in the controversy he is estopped, after litigation is begun, from changing his ground and putting his conduct on another and different consideration." Ault vs. Dustin, 100 Tenn. 365; Railway Co. vs. McCarthy 96 United States, 258.

This rule equally disposes of the contention that the determination of the medical director of the defendant against this claim was conclusive on the complainant, and also as to the effect under the by-laws of the failure of the complainant to appeal from the decision of the Executive Committee to the General Counsel.

Independent, however of the views above expressed, we think that the present suit could be maintained by the complainant in
254 her own name, having the legal title by virtue of this certificate in question to the fund provided for in it, and that, under section 14, her recovery would enure to the benefit of her children. It is not necessary, however, in order to save this claim in favor of complainant, that this ground should be taken, as we are satisfied that the views already presented are sound, and that she is entitled in her own right to this recovery.

This leaves open only the question as to whether the death of the assured was due to the excessive use of narcotics, and of vinous and malt liquors. That his death was the result of suicide, produced by the inhalation of illuminating gas, is beyond controversy. It is not insisted, however, that the death thus caused was within the inhibition of the policy. The laws of the Order prevented the interposition of the defenses of suicide, where a member had continued in good standing for a period of ten years, or more as was the case of the deceased.

An examination of the record shows that the overwhelming weight of the testimony, coming from witnesses who knew the deceased intimately for fifteen or twenty years, and some of them up to the time of his death, is that he was a moderate drinker and was not addicted to the use of narcotics in any form. His death on this record, can be attributed to the fact that the deceased had become desperate from financial straits, and on account of his conduct,

whatever it may have been, which had separated from him the present complainant and their four children, and the consciousness of the utter waste of what might otherwise have been, possibly brilliant life. The statement of the complainant, in the proofs of loss, with regard to his drinking and to the use of morphine, were honestly made by her. She had not seen him for about fourteen years before the making of these proofs. While they lived together as man and wife, as is shown, he did drink moderately, and knowing this she answered as to the habits of the deceased as to the use of spirituous or fermented liquors, that "he did drink prior to leaving
255 Chattanooga". In response to the questions as to whether he used morphine etc., she made reply, as has been seen, "I think he used morphine." This last answer is explained by her in an affidavit submitted to the defendant, when seeking a settlement of her claim, and before the institution of the present suit, as well as in her deposition, by the statement *of,* that prior to their separation, while in the city of Chicago, upon one occasion she found a white substance in the room occupied by herself and her then husband, and apprehensive that it moght be a narcotic, she sent it by one of their children to a druggist for his opinion, and the child came back and reported that it was morphine; and that this was the incident that she had in her mind at the time she made this particular answer; she stated further, that she knew nothing since their separation of the habits of the deceased.

We regard this explanation as entirely satisfactory and consistent with good faith in pressing the present claim.

The chancellor not only gave the complainant a decree for the amount of the certificate and interest, but allowed her, in addition thereto, 25% thereon, under chapter 141, acts of 1901. It is insisted that this act in imposing this additional liability on the defendant is void, in that it impaired the obligation of the contract in question. This question has been presented and determined against this insistence in both published and unpublished opinions. We are entirely satisfied with the holding heretofore made. In all respects the decree of the chancellor is affirmed.

(Signed) BEARD, *C. J.*

256 Supreme Court of Tennessee, at Knoxville, September Term, 1909.

SATURDAY, *December* 4, 1909.

Court met pursuant to adjournment present and presiding the Hon. Chief Justice W. D. Beard and Hon. Associate Justices W. K. McAlister, M. M. Neil, Jno. K. Shields and B. D. Bell.

The minutes of Saturday November 27, 1909, were read and signed when the following proceedings were had, to-wit:

MRS. ANNIE SNYDER
VS.
SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE.

Affirmed.

This cause came on to be heard on the transcript of the record from the Chancery Court of Hamilton County, assignment of error, briefs and argument of counsel; from all of which the Court is of opinion that there is no error in the decree of the Chancellor and the same should be affirmed.

It is accordingly ordered, adjudged and decreed by the Court that the decree of the Chancellor be and the same is in all things affirmed.

It is further ordered adjudged and decreed by the Court that the complainant Mrs. Annie Snyder have and recover of the defendant, the Supreme Ruling of the Fraternal Mystic Circle, and The American Bonding Co., of Baltimore, surety on the appeal bond the sum of Three Thousand Eight Hundred and Sixty Nine Dollars ($3869.00) with interest from April 15, 1909, that being the date of the Chancellor's decree, to this date December 4, 1909, in amount $147.65 making a total amount of Four Thousand and Sixteen Dollars and Sixty-Five cents ($4016.65) together with all the costs of the cause in this Court and the Chancery Court of Hamilton County for all of which execution is awarded.

257 On motion of Pritchard and Sizer Attorneys for Mrs. Annie Snyder, A lien on the above recovery for their reasonable Attorneys fee is hereby allowed.

258 Supreme Court of Tennessee, at Knoxville, September Term, 1909.

THURSDAY, *December* 16, 1909.

Court met pursuant to adjournment present and presiding the Hon. Chief Justice W. D. Beard and Hon. Associate Justices W. K. McAlister, M. M. Neil, Jno. K. Shields and B. D. Bell.

The minutes of Saturday December 11, 1909, were read and signed when the following proceedings were had, to-wit:

MRS. ANNIE SNYDER
VS.
SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE.

Petition to Rehear Dismissed.

This cause came on to be further heard on petition to rehear and upon consideration of the same by the Court, the prayer of the petition is refused and the same dismissed.

The petitioner will pay the cost incident to filing said petition for which execution is awarded.

259 Supreme Court of Tennessee, at Knoxville, September Term, 1909.

SATURDAY, *December* 18, 1909.

Court met pursuant to adjournment present and presiding the Hon. Chief Justice W. D. Beard and Hon. Associate Justices W. K. McAlister, M. M. Neil, Jno. K. Shields and B. D. Bell.

The minutes of Thursday December 16, 1909 were read and signed when the following proceedings were had, to-wit:

MRS. ANNIE SNYDER
vs.
SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE.

Petition to Rehear Dismissed.

This cause came on to be further heard on the petition of defendants in error to rehear and upon consideration of the same the Court is pleased to refuse the prayer of said petition and the same is dismissed.

The petitioner will pay the cost incident to filing said petition for which execution is awarded.

260 Supreme Court of Tennessee, at Knoxville, September Term, 1909.

SATURDAY, *December* 18, 1909.

Court met pursuant to adjournment present and presiding the Hon. Chief Justice W. D. Beard and Hon. Associate Justices W. K. McAlister, M. M. Neil, Jno. K. Shields and B. D. Bell.

The minutes of Thursday December 16, 1909 were read and signed when the following proceedings were had, to-wit:

MRS. ANNIE SNYDER
vs.
SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE.

Order.

The decree heretofore on a former day of the term affirming the decree of the Chancellor is modified so as to show that said judgment to the extent of the 25% penalty amounting to $750.00, was allowed and affirmed under the provisions of Ch. 141 of the Acts of the Legislature of 1901 and the Court holds and especially adjudges that said Act is constitutional and does not violate the constitution of the state or of the United States, especially Article 1 Section 20 and Article 2 Section 2 of the Constitution of the State and Act 1 Section 10 of the Constitution of the United States and said Act does not impair the obligation of contract.

261 Filed March 5, 1910.

S. E. CLEAGE, *Clerk*,
By JAS. T. JOY, *D. C.*

STATE OF TENNESSEE,
County of Shelby:

F. Zimmermann, being duly sworn, makes oath that he is a solicitor engaged in the case of Annie Snyder v. Supreme Ruling of the Fraternal Mystic Circle pending in the Supreme Court of Tennessee; that he on or about January 17th, 1910, presented a petition to the Honorable Supreme Court of Tennessee at Nashville, Tennessee, requesting them to vacate the judgment herein upon the ground of inadvertence and oversight under Section 6334 of Shannon's Code of Tennessee. That the said Supreme Court entertained said petition and dismissed same on or about February 8th, 1910.

F. ZIMMERMANN.

Subscribed and sworn to before me this 4th day of March, 1910.

[Seal Chas. J. Haase, Notary Public, Memphis, Tenn.]

CHAS. J. HAASE,
Notary Public.

262 STATE OF TENNESSEE:

Office of the Supreme Court Clerk at Knoxville.

I, S. E. Cleage, Clerk of the Supreme Court at Knoxville, do hereby certify that the foregoing is a full, true and perfect copy of the transcript, briefs, affidavits of counsel, decrees and opinion of the Supreme Court in the cause Mrs. Annie Snyder vs. Supreme Ruling of the Fraternal Mystic Circle, determined in the Supreme Court at its September Term, 1909, as the same appears of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at office, in Knoxville, this March 10, 1910.

[Seal of the Supreme Court, Knoxville, Tenn.]

S. E. CLEAGE, *Clerk.*

STATE OF TENNESSEE:

I, W. D. Beard, Chief Justice of the Supreme Court of Tennessee, do hereby certify that the foregoing attestation is in due form and by the proper officer.

Given under my hand this 11th day of March, 1910.

W. D. BEARD,
Chief Justice.

STATE OF TENNESSEE:

Office of Supreme Court Clerk at Knoxville.

I, S. E. Cleage, Clerk of the Supreme Court at Knoxville, do hereby certify that the Hon. W. D. Beard is the Chief Justice of the Supreme Court of Tennessee, duly commissioned and qualified to hold said Court.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court, at office in Knoxville, this 12th day of March, 1910.

[Seal of the Supreme Court, Knoxville, Tenn.]

S. E. CLEAGE, *Clerk.*

263 *Petition for Writ of Error to the Supreme Court of Tennessee.*

ANNIE SNYDER

v.

SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE.

To the Honorable Melville Weston Fuller, Chief Justice of the United States, and to the Honorable Horace H. Lurton, Associate Justice of the Supreme Court of the United States, and to the other Justices of said Honorable Courts and to the Honorable the Supreme Court of the United States:

The petition of the Supreme Ruling of the Fraternal Mystic Circle, a fraternal beneficiary association, chartered under the laws of Pennsylvania, and having its situs in Philadelphia, in said state, and being authorized by the laws of Tennessee to do business in said last named state, shows:

I.

Heretofore on the 17th day of Aug., 1908, a bill in equity was filed in the Chancery Court of Hamilton County, at Chattanooga, Tennessee, by Annie Snyder against this petitioner, seeking a recovery upon a $3,000 benefit certificate, issued by this petitioner upon the life of one Charles Snyder, from whom complainant afterwards had been divorced. The bill, likewise prayed for the imposition of a penalty of twenty five per cent of the face of the certificate under Chapter 141,, Acts of Tennessee of 1901. This petitioner defended upon the grounds, 1, that the insured had committed suicide and was addicted to the intemperate use of liquor and the habitual use of morphine in violation of the contract of insurance; 2, that, under the laws of petitioning association a divorced wife could not be a beneficiary, and the divorce operated as an annulment of her designation as a beneficiary; 3, that the imposi-

264 tion of a penalty was a violation of the Constitution of the United States in that it impaired the obligation of a contract. The issues so presented were found against this petitioner and the Chancery Court entered a decree in favor of complainant against this petitioner for $3,000.00, together with interest and cost and a penalty of $750.00, from which decree petitioner prayed and perfected its appeal to the Supreme Court of Tennessee.

II.

Petitioner further shows that the cause was heard by the Supreme Court of Tennessee at its September Term of 1909 at Knoxville, Tennessee, and that on December 4th, 1909, said Supreme Court in

all things affirmed the decree of the court below and entered a new decree onerating this petitioner with the $3,000 called for in the certificate, $750.00 penalty, interest on both amounts and costs of the cause, amounting in all as of that date to the sum of $4016.66, and an execution was awarded for said amount against this petitioner. Petitioner, by its attorney, David L. Snodgrass, argued the said Supreme Court that the imposition of the penalty was in violation of the Constitution of the United States in that it impaired the obligation of a contract.

III.

Petitioner further shows that the Supreme Court of the State of Tennessee is the highest Court in said State on which a decision in said suit of Annie Snyder v. Supreme Ruling of the Fraternal Mystic Circle could be had.

IV.

Petitioner further shows that it is aggrieved by the aforesaid decree against it and claims the right to remove said decree to the Supreme Court of the United States, by writ of error under the statutes of the United States, authorizing writs of error to state courts, because said decree against petitioner, so far as it imposed a penalty, was rendered upon a statute of the State of Tennessee, being Chapter 141, Acts of 1901 of the General Assembly of the State of Tennessee, entitled "An Act to impose additional liability upon insurance companies and other corporations, firms or persons, for failure to promptly pay insurance losses and liability upon policy holders where suits are not brought in good faith." Petitioner claimed and alleged in said suit, and still claims and alleges, that said statute, as applied to petitioner, was in contravention and violation of the Constitution of the United States, Article 1, Section 10, providing that

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"No state shall * * * pass any bill of attainder, ex post facto, or law impairing the obligation of contracts. * * *"

And petitioner averred, and now avers, that said Act of Tennessee impaired the obligation of the contract existing at the time of the passage thereof between petitioner and the person under whom said Annie Snyder claimed, and deprived petitioner of its property without due process of law, in contravention of Section 1 of the 14th Amendment to the Constitution of the United States.

And petitioner further shows that said decree of said Supreme Court of Tennessee was in violation of the contract entered into between petitioner and the person under whom said Annie Snyder claimed.

V.

Petitioner further shows that on or about January 17th, 1910, petitioner filed its petition with the Justices of the Supreme Court of Tennessee, praying said Court to set aside and vacate the decree in said cause under Section 6334 of Shannon's Code of Tennessee, providing that where a decree has been rendered by inadvertence and oversight, where as a matter of fact there was no action, the court

may vacate such decree at any time. Petitioner shows that said Court entertained said motion and considered the same and that it was finally denied on February 8th, 1910.

266 VI.

The decision of the honorable Supreme Court of the State of Tennessee on said claim and contention of your petitioner was adverse thereto, all of which appears by the record of the proceedings in said cause, and which is herewith submitted.

Wherefore petitioner prays the allowance of a writ of error and supersedeas returnable unto the Supreme Court of the United States, and for citation and supersedeas.

SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE,
By F. ZIMMERMAN, *Attorney.*
F. ZIMMERMAN,
Attorney for Petitioner.

STATE OF TENNESSEE,
County of Shelby:

F. Zimmermann, being duly sworn, deposes and says I am the present solicitor for the petitioner herein; I have inspected the record in the case of Snyder v. Supreme Ruling, and the matters stated in the foregoing petition are true to the best of my knowledge, information and belief.

F. ZIMMERMANN.

Subscribed and sworn to before me this 7th day of March, 1910.

[Seal of Chas. J. Haase, Notary Public, Memphis, Tenn.]

CHAS. J. HAASE,
Notary Public.

267 ANNIE SNYDER
v.
SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE.

Assignment of Errors to the Supreme Court of the United States.

Now comes the Supreme Ruling of the Fraternal Mystic Circle, plaintiffs in error, and make and file their assignment of errors.

I.

The Supreme Court of Tennessee erred in not dismissing the bill herein in so far as it prayed for the assessment of a penalty, for the reason that such penalty, as applied to defendant in that suit was and is in violation of Article 1, Section 10, and of Section 1 of the 14th Amendment of the Constitution of the United States.

II.

The Supreme Court of Tennessee erred in not rendering a decree dismissing the entire bill and in holding defendant therein liable

under its contract of insurance, when, under the laws of defendant association, by which members and beneficiaries are bound, a divorce operated as an annulment of the designation of beneficiary, and prohibited the payment of the benefit to a divorced wife.

F. ZIMMERMANN,
Solicitor for Petitioner.

268 Filed in the Supreme Court of Tennessee, at Knoxville, Tenn., this March 21, 1910.

S. E. CLEAGE *Clerk.*
By JAS T. JOY, *D. C.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Tennessee, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Supreme Ruling of the Fraternal Mystic Circle, appellant, and Annie Snyder, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution,
269 or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happended to the great damage of the said appellant as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, the 17th day of March, in the year of our Lord one thousand nine hundred and ten.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

March 17th, 1910.

270 UNITED STATES OF AMERICA, ss:

To Annie Snyder, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Tennessee wherein Supreme Ruling of the Fraternal Mystic Circle is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John M. Harlan, Associate Justice of the Supreme Court of the United States, this 17th day of March, in the year of our Lord one thousand nine hundred and ten.

JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

271 On this 22 day of March, in the year of our Lord one thousand nine hundred and ten, personally appeared before me, the subscriber, Jno. A. McGill, Deputy Sheriff, and makes oath that he delivered a true copy of the within citation to Mrs. Annie Snyder.

JNO. A. McGILL, *D. S.*

Sworn to and subscribed the 22 day of March, 1910.
SAM ERVAN,
Clerk and Master.

272 Copy.

Know all men by these Presents, That we, Supreme Ruling of the Fraternal Mystic Circle, as principal, and American Bonding Company of Baltimore, as sureties, are held and firmly bound unto Annie Snyder in the full and just sum of Eight Thousand five hundred dollars, to be paid to the said Annie Snyder, her certain Attorney, executors, Administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 17 day of March, in the year of our Lord one thousand nine hundred and ten.

Whereas, lately at a Session of the Supreme Court of Tenn. in a suit depending in said Court between Annie Snyder & Supreme Ruling of the Fraternal Mystic Circle a decree was rendered against the said Supreme Ruling of the Fraternal Mystic Circle and the said Supreme Ruling of the Fraternal Mystic Circle having obtained Writ of Error and Supersedeas and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Annie Snyder citing and admonishing her to be and appear at a Supreme Court of the United States, at Washington with- thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Supreme Ruling of the Fraternal Mystic Circle shall prosecute its writ to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE, [SEAL.]
By F. ZIMMERMAN, *Attorney.* [SEAL.]
AMERICAN BONDING CO. OF BALTIMORE, [SEAL.]
By THOS. J. S. LARKMUTT,
Attorney in Fact.

Sealed and delivered in presence of—

J. M. RYAN.
ROBERT MOULDEN.

Approved by:

JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

March 17th, 1910.

273 STATE OF TENNESSEE:
Office of the Supreme Court Clerk:

I, S. E. Cleage, Clerk of the Supreme Court at Knoxville, Tennessee do hereby certify that I have attached to the transcript of the record in the cause Annie Snyder vs. Supreme Ruling of the Fraternal Mystic Circle. The Petition for Writ of Error. The Assignment of error. The Original Writ of Error. The Original Citation and copy of bond. The transcript is sent up as a return to writ of error.

Witness my hand and seal of Said Court at office in Knoxville, Tennessee this 13th day of April 1910.

[Seal of the Supreme Court, Knoxville, Tenn.]

S. E. CLEAGE, *Clerk.*

274 No. 880. October Term, 1909.

ANNIE SNYDER
v.
SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE.

Assignment of Errors to the Supreme Court of the United States.

Now comes the Supreme Ruling of the Fraternal Mystic Circle, plaintiffs in error and make and file their assignment of errors:

I.

The Supreme Court of Tennessee erred in not dismissing the bill herein in so far as it prayed for the assessment of a penalty, for the reason that such penalty, as applied to defendant in that suit, was and is, in violation of Article I. Section 10, and of Section 1 of the 14th Amendment of the Constitution of the United States.

II.

The Supreme Court of Tennessee erred in not rendering a decree dismissing the entire bill and in holding defendant therein liable under its contract of insurance, when, under the laws of defendant association, by which members and beneficiaries are bound, a divorce operated as an annulment of the designation of beneficiary, and prohibited the payment of th- benefit to a divorced wife.

F. ZIMMERMAN, *Att'y.*

275 In the Supreme Court of the United States.

No. 880. October Term, 1909.

ANNIE SNYDER
vs.
SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE.

The following are the parts of the record which plaintiff in error regards necessary for the consideration of the errors assigned, and it prays that no other part of the record be printed.

276

F. ZIMMERMANN, *Att'y.*

[Endorsed:] 880/22106.

277 STATE OF TENNESSEE,
County of Hamilton:

Jno. A. McGill D. S., being duly sworn, makes oath that he delivered a copy of the Assignment of errors and list of the parts of the record to be printed, which is hereto attached, in the case of Annie Snyder v. Supreme Ruling of the Fraternal Mystic Circle, No. 880 October 1909, Supreme Court of the United States, to Mrs. Annie Snyder.

JNO. A. McGILL, *D. S.*

Subscribed and sworn to before me this 2nd day of May, 1910.

[Seal Hamilton County Court, Tennessee.]

W. O. HAYS, *Clerk.*

[Endorsed:] 880/22106.

278 [Endorsed:] File No. 22,106. Supreme Court U. S. October Term, 1909. Term No. 880. Supreme Ruling of the Fraternal Mystic Circle, Pl'ff in Error, vs. Annie Snyder. Assignment of errors and designation by plaintiff in error of parts of record to be printed, with proof of service of same. Filed May 6, 1910.

Endorsed on cover: File No. 22,106. Tennessee Supreme Court. Term No. 505. Supreme Ruling of the Fraternal Mystic Circle, plaintiff in error, vs. Annie Snyder. Filed April 16, 1910. File No. 22,106.

11 2

In the Supreme Court of the United States, October Term, 1911.

No. 254.

SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE, Plaintiff in Error,

v.

ANNIE SNYDER, Defendant in Error.

Agreement of Counsel.

In this cause, it appearing that plaintiff in error called for the printing of the benefit certificate filed as exhibit "A" to the original bill, which was not copied in the record of the State Court, but sent up as the original document, as shown on page 66 of the printed record in this cause, and it further appearing that defendant in error was served with a copy of the parts of the record to be printed, to which there was no objection, but that defendant in error had the record printed and omitted to insert said benefit certificate in the printed record, which omission has just now been discovered, now, in order to prevent delay in the hearing of the cause and to save the cost of a motion for certiorari for diminution of the record, it is agreed by the attorneys of both parties that the Clerk of the Supreme Court may now print the said certificate, exhibit "A" to the original bill, together with this agreement and attach the same to the printed record in this cause, and that the Supreme Court may look to this exhibit, the same as if it had been printed in the record.

F. ZIMMERMAN,
Sol. for Pl'f in Error.
J. B. SIZER,
Solicitor for De'f't in Error.

[Endorsed:] 254/22106.

No. 2705. $3,000.

The Fraternal Mystic Circle.

Benefit Fund Certificate.

This Certificate is issued to Charles C. Snyder, a member of Chattanooga Ruling, No. 75, Fraternal Mystic Circle, located at Chattanooga, Tenn., upon evidence received from said Ruling that said person is a contributor to the Benefit Fund of this Order; upon conditions that the statements made by said person in the petition for this membership in said Ruling, (and the statements certified by said petitioner to the Worthy Medical Examiner, both of which are filed

in the Supreme Recorder's Office, be made a part of this contract, and upon condition that the said member complies, in the future, with the laws, rules, and regulations now governing the said Ruling and Fund, or that may hereafter be enacted by the Supreme Ruling to govern said Ruling and Fund.) These conditions being complied with, the Supreme Ruling of The Fraternal Mystic Circle, hereby promises and binds itself to pay out of its Benefit Fund, to Annie Snyder, his wife, in case of her prior death to his children, a sum not exceeding Three thousand dollars, in accordance with and under the provisions of the laws governing said fund, upon satisfactory evidence of the death of said member, or a sum not exceeding Fifteen hundred dollars, in accordance with and under the provisions of the laws governing said fund, upon satisfactory evidence of the total disability of said member, and upon the surrender of this Certificate; provided that said member is in good standing in this Order, at the time of said death or total disability, and provided also, that this Certificate shall not have been surrendered by *siad* member, and another Certificate issued at the request of said member, in accordance with the laws of this Order.

In witness whereof, the Supreme Ruling of the Fraternal Mystic Circle has hereunto affixed its Seal and causes this Certificate to be signed by its Supreme Mystic Ruler, and Supreme Recorder, and recorded in the records thereof, at Columbus, Ohio, this 23d day of November, A. D. 1887.

(Signed) D. E. STEVENS,
Supreme Mystic Ruler.

[Seal Supreme Ruling of the Fraternal Mystic Circle. Instituted Dec. 10, 1884.]

(Signed) JOHN N. WILSON,
Supreme Recorder.

Witnessed and delivered in our presence:
(Signed) HUGH R. BANKS, *W. Ruler.*
(Signed) E. W. ANDERSON, *W. Recorder.*

I accept this Certificate on the conditions named herein:

(Signed) CHAS. C. SNYDER.
(Signature of Member.)

[Chattanooga Ruling No. 75. Subordinate Ruling Seal. F. M. C. Instituted Nov. 23, 1887. Chattanooga, Tenn.]

(*Form for Change of Beneficiary.*)

——, —— —, 18—.

—— Subordinate Ruling, No. ——, F. M. C., to the Supreme Recorder, Supreme Ruling:

I herewith surrender and return to the Supreme Ruling of The F. M. C., the within Benefit Certificate, No. —, and direct that a

new one be issued to me, payable to —— ——. Related to me as ——.

[Seal of the Sub. Ruling.]

—— ——,
Member.

[Seal of the Sub. Ruling.]

Attest:

—— ——,
Worthy Recorder.

Receipt for Payment of Claim.

—— Subordinate Ruling, No.—, F. M. C.:

Received of the Supreme Ruling of the F. M. C., the sum of —— dollars, the same being in full satisfaction and settlement of all claims against The Fraternal Mystic Circle under the within Benefit Fund Certificate, No. ——, on account of the death of the within named member of said order.

—— ——,
—— ——,
Beneficiaries.

Witness:

—— ——.

We hereby certify, that the order for the payment of the benefit due on account of the death of the within named member, has been delivered to the proper person.

—— ——,
Worthy Ruler.

[Seal of the Sub. Ruling.]

—— ——,
Worthy Recorder.

Endorsed: No. 2705. Benefit Fund. Certificate Fraternal Mystic Circle. Issued to Bro. C. C. Snyder, of Chattanooga, Ruling No. 73, of Chattanooga, Tenn. Date November 23, 1887. Maximum Amount, $3,000.

No. 11,317. Exhibit "A" to Original Bill. Mrs. Annie Snyder *vs.* Supreme Ruling of Fraternal Mystic Circle. Filed Aug. 17, 1908. Sam Erwin, C. & M., By —— ——, D. C. & M.

Fraternal Mystic Circle.

No. —. Chatta. Ruling, No. 75, F. M. C., Jan. 11, 1888. Received of Bro. C. C. Snider One and 60/100 Dollars, in payment of Adv. Assen't to —— —, 188-. $1.60. A. N. Sloan, Worthy Collector.

[Endorsed:] File No. 22,106. Supreme Court U. S. October Term, 1911. Term No. 254. Supreme Ruling of the Fraternal Mystic Circle, Pl'ff in Error, vs. Annie Snyder. Stipulation and addition to record. Filed March 7, 1912.

IN THE

SUPREME COURT OF UNITED STATES

OCTOBER TERM, 1910.

SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE

vs.

ANNIE SNYDER.

MOTION TO DISMISS THE WRIT OF ERROR, AND TO AFFIRM THE JUDGMENT.

Now comes Annie Snyder, the defendant in error, by J. B. Sizer, her counsel, and moves this court to dismiss and quash the paper purporting to be a writ of error herein for want of jurisdiction and because the paper purporting to be a writ of error is informal, irregular and insufficient on the grounds stated in the

annexed argument and upon other grounds.

And said defendant in error also moves this court to affirm the judgment of the Supreme Court of Tennessee in the said cause upon the ground that although the record may show that this court has jurisdiction, it is manifest that the writ of error was taken for delay only, or that the question on which the jurisdiction depends is so frivolous as not to need further argument.

J. B. SIZER,

Attorney and Counsel for Defendant in Error.

To F. Zimmerman, Esq.,

Attorney for Plaintiff in Error,

1008-1009 Tennessee Trust Building,

Memphis, Tennessee,

Please take notice that on the printed record and on all the papers and proceedings herein, I will submit to the Supreme Court of the United States, at a stated term thereof, on Monday, November 14th, 1910, at the capitol in the City of Washington, in the District of Columbia, at the opening of the court on that day, or as soon thereafter as counsel can be heard, the motions of which the foregoing are copies; and that I will submit with said motions and in support of the same the arguments and brief a copy of which are hereto annexed.

This 14th day of October, 1910.

J. B. SIZER,

Attorney and Counsel for Defendant in Error.

State of Tennessee, Hamilton County, Eastern District of Tennessee.

J. B. Sizer, being first duly sworn, deposes and says:

I am attorney and counsel for Mrs. Annie Snyder, the defendant in error in the cause hereinbefore entitled. I deposited in the mail at Chattanooga, Tennessee, on the 14th day of October, 1910, with postage prepaid, a full, true and correct copy of the foregoing motions and notice and of the argument and brief in support thereof hereto annexed, addressed to F. Zimmerman, who is attorney and counsel for the plaintiff in error, 1008-1009 Tennessee Trust Building, Memphis, Tennessee, which is his proper address; and said copies were so mailed at such time as to reach the said Zimmerman, by due course of mail three weeks before the date fixed in said notice for the presentation of said motion. Said papers were sent by registered mail and I hereto attach the regular receipt returned to me through the postoffice at Chattanooga, purporting to bear the acknowledgment by said Zimmerman of the receipt of said papers.

J. B. SIZER.

Sworn to and subscribed before me this 22d day of October, 1910.

J. W. THOMPSON,
Notary Public.

(Seal)

ARGUMENT IN SUPPORT OF MOTION

I.

STATEMENT OF FACTS.

This suit was brought by the defendant in error against the plaintiff in error in the Chancery Court of Hamilton County, Tennessee, to recover on a certificate or policy of insurance issued by the plaintiff in error on the life of Chas. C. Snyder, the former husband of the defendant in error, from whom, however, she had been divorced on her own application several years prior to his death. The policy was by its terms payable to the defendant in error if she survived the insured, otherwise to his children; and she averred in her bill of complaint that after she obtained her divorce she advised the plaintiff in error thereof and asked for information as to her rights as beneficiary under the policy in view of the divorce; that the Supreme Mystic Ruler of the plaintiff in error, being its highest officer, advised her that the policy, or certificate would be payable to her on the death of the insured if she survived him provided the assessments were paid thereon, unless the insured changed the beneficiary as he had a right to do, and

that if she retained the certificate it might be difficult for the insured to make any such change, even if he desired to do so; that she made arrangements with the plaintiff in error so that she would receive notice if any attempt should be made by the insured to change the beneficiary; that on the strength of and in reliance on the statements and representations of the plaintiff in error as to her rights in the policy, she continued to pay all assessments, dues and charges thereon up to the death of the insured; and that no change of the beneficiary was in fact made.

It was also averred that the plaintiff in error had refused to pay the policy, after due proofs of the death of the insured had been made, and that the refusal was not in good faith, and had inflicted additional loss, expense and injury on the complainant; and she sought to recover in addition to the amount of the policy and interest thereon, a penalty imposed by a statute of Tennessee, to be hereinafter more particularly referred to. (Rec., pp. 1-3).

The plaintiff in error denied liability and resisted payment of the policy on two grounds:

1. It contended that under its laws a divorced wife was not entitled to receive the benefits of a policy on the life of the husband from whom she was divorced and the representations made to the complainant by the Supreme Mystic Ruler, which were admitted to have been made practically as alleged in the bill, could not bind the corporation.

2. It averred that the health of the insured had become impaired by the use of narcotics, and alcoholic, vinous and malt liquors, and his death had resulted directly or indirectly from the use of such articles, and therefore under the laws of the order there could be no recovery on the policy. The answer made no reference to the penalty feature of the bill (Rec., pp. 4-8).

On final hearing the Chancellor decreed in favor of the complainant, and adjudged that the refusal of the defendant to pay the amount of the policy to the complainant "was not in good faith, and that such failure has inflicted additional loss, expense and injury upon complainant as the owner and holder of said certificate; that defendant refused to pay said amount for more than sixty days after demand for payment was made by complainant prior to the filing of her original bill; and that complainant is entitled to recover, on account of such additional expense, loss and injury 25 per cent of the principal amount stipulated for in said policy * * the court being of the opinion and so adjudging that said amount would be reasonable compensation and reimbursement to the complainant for her said loss, expense and injury" (Rec., pp. 41-42).

From this decree the defendant appealed to the Supreme Court of the state which affirmed in all things the Chancellor's decree, the opinion in the case being delivered by Chief Justice Beard (Rec., pp. 48-57).

This opinion is also published in 122 Tenn. Rep., 248 *et seq.*

In the brief of counsel for the plaintiff in error in the Supreme Court, it was contended that

"there was error in applying the penalty Act of 1901 to this case * * * The Act, first, has no application to a defense of this kind, and in this case, and second, whether it does or not is unconstitutional and void.

"The contract between this defendant and C. C. Snyder was made in 1887.

"The Act was passed in 1901 'to impose an additional liability' on this Company or Ruling. It impairs the obligation of their contract and is void.

Const. of Tenn., Art. 1, Sec. 20.
Const. of Tenn., Art. 2, Sec. 2.
Const. U. S., Art. 1, Sec. 10" (Rec., p. 45).

This is the only reference to any constitutional question in the entire record in the state court.

In passing on this question, the Supreme Court said:

"The Chancellor not only gave the complainant a decree for the amount of her certificate and interest, but allowed her, in addition thereto, 25 per cent. thereon, under chapter 141, Acts of 1901. It is insisted that this act in imposing this additional liability on the defendant is void in that it impaired the obligation of the contract in question. This question has been presented and determined against this insistence both in published and unpublished opinions. We are entirely satisfied with the holding heretofore made" (Rec., p. 56).

Several petitions to rehear, and to set aside the judgment, etc., were presented by the defendant and dis-

missed by the court. At a later day of the term, however, after the entry of the order affirming the Chancellor's decree, the Supreme Court made an order setting forth specifically that the penalty was allowed under the provisions of Ch. 141, Acts of 1901, "and the court holds and especially adjudges that said Act is constitutional and does not violate the constitution of the State or of the United States, especially Article 1, Section 20 and Article 2, Section 2 of the Constitution of the State and *Act* (Article ?) 1, Section 10 of the Constitution of the United States and said Act does not impair the obligation of contract" (Rec., p. 58).

Thereupon the defendant brought the case to this court by writ of error. The assignments of error are:

I.

"The Supreme Court of Tennessee erred in not dismissing the bill herein in so far as it prayed for the assessment of a penalty, for the reason that such penalty, as applied to defendant in that suit, was and is in violation of Article 1, Section 10, and of Section 1 of the 14th Amendment of the Constitution of the United States.

II.

"The Supreme Court of Tennessee erred in not rendering a decree dismissing the entire bill and in holding defendant therein liable under its contract of insurance, when, under the laws of defendant association, by which members and beneficiaries are bound, a divorce operated as an annulment of the designation of beneficiary, and prohibited the payment of the benefit to a divorced wife" (Rec., p. 66).

The Act of 1901, chapter 141, on which the penalty in controversy was based provides:

"That the several insurance companies of this state, and foreign insurance companies and other corporations, firms or persons doing an insurance business in this state, in all cases when a loss occurs and they refuse to pay the same within sixty days after a demand shall have been made by the holder of said policy on which said loss occurred, shall be liable to pay the holder of said policy, in addition to the loss and interest thereon, a sum not exceeding twenty-five per cent on the liability for said loss: Provided, that it shall be made to appear to the court or jury trying the case that the refusal to pay said loss was not in good faith, and that such failure to pay inflicted additional expense, loss or injury upon the holder of said policy; and provided further that such additional liability within the limit prescribed shall, in the discretion of the court or jury tryng the case, be measured by the additional expense, loss and injury thus entailed."

The second section of the Act imposes a like liability on policy holders where it appears that the suit was not brought in good faith.

BRIEF AND ARGUMENT.

It will be seen from the record that the only particular in which the constitution of the United States was invoked in the state court was that it was contended that the application of the Act of 1901 to a contract made in 1887 violated Article 1, section 10 of the constitution in that it impaired the obligation of the contract. In this court it is sought in the assignments of error to raise the additional contention that the application of the penalty to the defendant violates the Fourteenth Amendment; and apparently, inasmuch as an assignment of error is directed to it, the plaintiff in error contends that this court has also jurisdiction to review the judgment of the Supreme Court of Tennessee on the question of the liability of the defendant to the complainant for the amount of the policy.

It is the contention of the defendant in error on this motion:

1. That no constitutional question can be made in the case in this court, which was not made in the state court; and therefore the only constitutional question which the plaintiff in error can rely on is whether the imposition of the statutory penalty impaired the obligation of the contract sued on.

2. That if the Fourteenth Amendment had been relied on in the state court it would have been unavailing, because it is perfectly clear that the imposition of the penalty violates no right secured to plaintiff in error by the Fourteenth Amendment.

3. That the question of the liability of the plaintiff in error to the defendant in error on the policy sued on involves no federal question, and this court is without jurisdiction to review the judgment of the Supreme Court of the state in that regard.

4. That the contention that the imposition of the statutory penalty impairs the obligation of the contract sued on "is so frivolous as not to need further argument," and therefor the judgment of the state court should be affirmed under Rule 6 of this court.

Taking up these propositions in the order stated, we consider:

1. *The right to rely on the Fourteenth Amendment.* Where a federal question is raised in the state courts, the party who brings the case to this court cannot raise here another federal question, which was not raised below.

> *Chapin vs. Fye*, 179 U. S., 127, 130.
> See also *Johnson vs. New York Life Ins. Co.*, 187 U. S., 491.

In case of *Louisville & N. R. Co. vs. Melton*, decided by this court, May 31, 1910, and not officially reported at the time of preparing this brief it was

sought in this court to rely upon the "full faith and credit" clause of the constitution. The court said, however, that the contention on that point was without merit "because of the failure of the railway company to plead or in any adequate way to call the attention of the court below to the fact that, in connection with the proper construction of the statute, the benefit of the due faith and credit clause of the constitution of the United States was relied on."

2. *The effect of the Fourteenth Amendment if it is involved.*

This question would seem to be conclusively settled by the opinion of this court in *Farmers & Merchants Ins. Co. vs. Dobney*, 189 U. S., 301, in which it was held that a statute of Nebraska very similar in its scope and provisions to the Tennessee statute in question here, was not repugnant to the Fourteenth Amendment. And on the strength, principally, of that case the Supreme Court of Tennessee in the case of *Insurance Co. vs. Whitaker*, 112 Tenn., 151, 168-174, held that the act involved here was not in violation of the same constitutional provision.#

3. *The right of defendant in error to recover on the policy not reviewable here.*

It was not contended in the state court, and we do not understand it is contended here, that the determination of the controversy between the parties on this point involved any federal question. The right of the defendant in error depended on the proper construction of the laws of the association, as applied to the facts

See also-
Williamson v. Ins. Co. 141 Fed. Rep. 54
Railroad Accident Ins. Co. v. Leigen

of the case; and even if it were conceded, for the sake of the argument, that the decision of the State Court was erroneous, still it involved no right arising under the constitution or laws of the United States, and therefore this court has not jurisdiction to correct it. In cases brought to this court by writ of error from a state court the jurisdiction of this court is confined to the federal questions raised in the state court and it cannot review other than federal questions involved in the case.

Murdock vs. Memphis, 20 Wall., 590.
Osborne vs. Florida, 164 U. S., 650, 656.
Leathe vs. Thomas, 207 U. S., 93.

When a case is properly brought to the Supreme Court from a Circuit Court upon constitutional grounds the whole case is open. But it is otherwise when the case comes from a state court.

German Sav. Soc. vs. Dormitzer, 192 U. S., 125, 128.

And "it is firmly established that when parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of the state court does not deprive the unsuccessful party of his property without due process of law within the Fourteenth Amendment of the Constitution of the United States."

Bonner vs. Gorman, 213 U. S., 86, 91.

And it surely cannot be seriously contended that the fact that the state court reached an erroneous conclusion as to the proper construction of the contract, and the rights of the parties thereunder, is an impairment of the obligation of the contract within the meaning of the Constitution of the United States. In order to come within the constitutional provision the contract "must have been impaired by some act of the legislative power of the state, and not by a decision of its judicial department only."

Central Land Company vs. Laidley, 159 U. S., 103, 109.
See also *Hanford vs. Davies*, 163 U. S., 273, 278.

Therefore the only question open to consideration and review in this court is:

4. *Whether the imposition on the plaintiff in error by the State Court of the penalty prescribed by the Act of* 1901 *impairs the obligation of the contract sued on.*

Where the principles to be applied in the exercise of the jurisdiction of this court are so well settled that further argument is not needed, the jurisdiction rests on so narrow a foundation as to give color to the motion to dismiss and justify the disposal of the case on the motion to affirm.

N. Y. & N. E. R. R. Co. vs. Bristol, 151 U. S., 556, 566.
See also *New Orleans Waterworks Co. vs Louisiana*, 185 U. S., 336, 344.

It is our contention that in so far as this court has jurisdiction at all the case falls within the foregoing principle, and the motion to affirm should be sustained.

(a) The avowed purpose of the act in question is to *strengthen*, and not to *impair* the obligation of contracts affected by it; since it imposes a penalty on the obligor who, in bad faith, refuses to perform it, while at the same time the right of the obligor to interpose any just defense, or any which the obligor may in good faith believe to be just, is left unimpaired.

(b) The act does not add to or detract from the *contract* rights of either party. It affects the *remedy* only, by requiring the party who either fraudulently prosecutes or fraudulently defends an action on an insurance contract to pay the loss, expense or injury inflicted by his wrongful action on the opposite party. In other words, the insurer who, in bad faith, sets up an unjust and inequitable defense to an insurance contract is required to reimburse the other party for the expense entailed by the unjust defense; but the other party gets nothing in addition to what the contract entitles him to. The act expressly provides that the liability imposed by it is to be "measured by the additional expense, loss and injury" entailed by the fraudulent defense.

(c) If the obligor acts honestly and in good faith no additional liability can be imposed on it under this act and unless it can be successfully maintained that

the obligor has a vested right to act dishonestly and in bad faith, at the expense of the other party, it cannot be maintained that the act has deprived him of any vested right. There is no provision of the contract which either expressly or by implication, imposes on the obligee the expense incident to a fraudulent defense or relieves the obligor from responsibility therefor.

The fact that a statute affects a contract *retrospectively*, does not necessarily impair the obligation of the contract. The statute may, without violating the constitutional provision in question, enhance *the difficulty* of performance to one party or diminish *the value* of performance to the other, provided it leaves *the obligation* of performance in full force.

> *Curtis vs. Whitney*, 13 Wall., 68.
> See also *Matthewson vs. Satterlee*, 2 Peters, 378, 407.

And so a law which either *takes away an existing remedy, or adds a new one*, cannot be said to impair the obligation of an existing contract; provided, of course, the parties are not deprived of *all* remedies for the enforcement of the contract obligations.

In the case of *Sturges vs. Crowinshield*, 4 Wheat., 122, 200, discussing the question whether or not a statute taking from the creditor the right to imprison his debtor impaired the obligation of contracts made before the passage of the act, this court said:

"The distinction between the obligation of a contract and the remedy given by the legislature to enforce

that obligation has been taken at the bar and exists in the nature of things. Without impairing the obligation of the contract the remedy may certainly be modified as the wisdom of the nation shall direct. Confinement of the debtor may be a punishment for not performing his contract, or may be allowed as a means of inducing him to perform it. But the state may refuse to inflict this punishment, or may withhold this means, and leave the contract in full force. Imprisonment is no part of the contract, and simply to release the prisoner does not impair the obligation."

In *Antoni vs. Greenhow*, 107 U. S., 769, 781-782, objection was made to a statute passed after the making of a contract, and affecting the remedy for its enforcement, because among other things the act contained no provision for the recovery of costs. On this point, the court said:

"Certainly it would not be claimed that the change of an ordinary statute, which provided a remedy for the enforcement of contracts, so as to prevent the recovery of costs when they had been given before, would impair the obligation of contracts between individuals that were affected by what was done."

In both the foregoing cases, and in many others to the same effect which might be cited, the act complained of *impaired the remedy* for the enforcement of the contract by taking away some portion of the remedies which existed when the contract was made. If it does not impair the obligation of a contract *to take away* a remedy for its enforcement which existed when the contract was made, *a fortiori* it would seem

that an act which gives *additional* remedies for the enforcement of a contract, or *increases the efficacy* of those existing, could not be said to impair its obligation; and so this court has frequently held.

In *Sampeyreac vs. United States,* 7 Pets., 222, 238, it was said:

"But considering the act of 1830 as providing *a remedy only* it is entirely unexceptionable. It has been repeatedly decided in this court that the retrospective operation of such a contract forms no objection to it. Almost every law, providing a new remedy, affects and operates upon causes of action existing at the time the law is passed."

In *City and Lake Railroad vs. New Orleans,* 157 U. S., 219, the question presented was whether a statute authorizing the enforcement by mandamus and without a jury of certain existing contracts with municipal corporations impaired the obligation of the contracts. The court said:

"What the act of 1888 does is to give a parish or municipal corporation an additional and more summary remedy for the enforcement of the obligation of any contract * * * It does not enlarge the obligation assumed by the defaulting corporation, nor impose new burdens upon such corporation, but only enables the other party to the contract, the public as represented by the parish or municipality, to compel the performance of that obligation. Modes of procedure in the courts of a state are so far within its control that a particular remedy existing at the time of the making of a contract may be abrogated altogether without impairing the obligation of the contract if another and equally

adequate remedy for the enforcement of that obligation remains or is substituted for the one taken away * * Much more may the state *give an additional and more efficacious remedy* for the enforcement of contracts in the performance of which the public health and the public safety are involved; provided always, that the new remedy is consistent with the nature of the obligation to be enforced, and does not impair any substantial right given by the contract. *One who engages by contract to do a certain thing cannot claim that the obligation he has assumed is impaired by legislation that is designed only to enforce performance of his obligation.*"

157 U. S., 224.

In *League vs. Texas*, 184 U. S., 156, it was contended that an act of the legislature of Texas which altered the remedies previously in force for the collection of delinquent taxes was in violation of the Federal Constitution in so far as it applied to taxes which had accrued prior to its passage. But the court said:

"That a state may adopt new remedies for the collection of taxes and apply those remedies to taxes already delinquent, without any violation of the Federal Constitution, is not a matter of doubt. A delinquent tax-payer has no vested right in an existing mode of collecting taxes. There is no contract between him and the state that the latter will not vary the mode of collection. Indeed, generally speaking, *a party has no vested right in a mere matter of remedy;* that is subject to legislative change. And a new remedy may be resorted to unless in some of its special provisions a constitutional right of the debtor or obligor is infringed. * * * *

"Defendant further contends that *interest, expenses and costs* are included in the new remedy by judicial proceedings which were not provided for by the prior statutes in reference to collector's sales. * * * *

"The costs referred to are simply *the ordinary expenses* which attend proceedings of the character prescribed * * * * There is no pretense that any separate charge is exorbitant or unreasonable. And if the state is compelled to resort to such proceedings for the collection of its taxes it may provide reasonable compensation for the officials charged with any duty in connection therewith, and incorporate the charges therefor as costs in the case. *Liability for these costs and expenses can be avoided* by payment of taxes, and a delinquent taxpayer, one who fails to discharge his obligations to the state, compelling it to go into court to enforce payment of the taxes due upon his land, *has no ground of complaint* because he is charged with the ordinary fees and expenses of a law suit. The statute may be retroactive, but a statute of a state is not brought into conflict with the Federal Constitution by the mere fact that it is retroactive in its operation."

184 U. S., 158-161.

To apply the language of the court above quoted to the facts of this case, a delinquent insurance company which *in bad faith refuses* to discharge its obligations to a policy holder, thereby compelling him to go into court to enforce his rights *has no ground of complaint because it is charged with the ordinary fees and expenses of a law suit.* And the act in question here *imposes no other liability* on the insurer than payment of "the additional expense, loss and injury," entailed on the policyholder by its fraudulent conduct; or in other

words the expense to the policyholder of enforcing his rights by suit.

The foregoing, among numerous decisions of this court along the same line, would seem to be conclusive on the question. The same question has also come before many of the state courts of last resort, on facts still more nearly parallel to those involved in the case at bar; and as persuasive authority, and in support of the proposition that the question has been so frequently settled that there is no substantial or well founded doubt about it, we beg to refer to a few of these state cases most closely in point.

In *American Fire Ins. Co. vs. Landfare*, 56 Neb., 482, the court had under consideration the question of the application of chapter 48 of the Nebraska laws of 1899, to policies issued prior to the passage of the act. The third section of the act provided that:

"The court, upon rendering judgment against an insurance company upon any such policy of insurance shall allow the plaintiff a reasonable sum as an attorney's fee, to be taxed as part of the costs."

The court said: "It is finally insisted that the court erred in rendering judgment against the defendant for $200 attorney's fees, since the policy was issued prior to the enactment of the statute authorizing the taxation of an attorney's fee in actions upon fire insurance policies. * * * The fact that this policy in suit was issued before the act was adopted allowing attorney's fees in actions like the present,

is immaterial. The statute in question authorizing the recovery of such fees applies to all policies whether written before or subsequent to the time the act became operative."

56 Neb., 495-496.

This is the same statute which was considered by this court in *Farmers' etc. Ins. Co. vs. Dobney,* 189 U. S. 301, and was held to be not in violation of the Fourteenth Amendment.

"The right to recover costs is no part of the remedy which inheres in the contract. The right is purely incidental and depends upon the state of the law when the suit is determined."

Rader vs. Road District, 36 N. J. L., 273, 282.

A statute providing that "no policy shall be avoided by reason of any mistake or misrepresentation unless it appears to have been intentionally and fraudulently made" applies to policies in force at the time of the passage of the act, and does not impair the obligation of such contracts.

Chamberlain vs. Ins. Co., 55 N. H., 249, 264.

An act imposing certain penalties upon a tenant who wrongfully continues in possession of the property leased, after a violation on his part of the terms of the lease, is applicable to contracts entered into prior

to its passage, and does not, as applied to such contracts, violate the constitution.

(a) The penalty is prescribed as punishment for a wrongful act, and makes no change in the *contract* rights of the parties.

(b) It has been frequently held that the legislature may *decrease or altogether remove* penalties without affecting the contract rights of the parties; and by parity of reasoning, it would be equally within the power of the legislature either to *increase* the penalty, or to *provide* one where none had previously existed. It is "so well established that the citation of any authorities in its support would be unwarranted, that a change in the remedy incident to existing contracts does not so affect rights thereunder as to make the law affecting the change unconstitutional when applied to such existing contracts."

Woodward vs. Winchill, 14 Wash., 394, *et seq*

An act preventing "bad faith and violation of contract" and securing "its more sure and faithful performance," does not, as applied to contracts in existence at the time of its passage, impair their obligation

Bryson vs. McCreary, 102 Ind., 1, 13.

An act making it an indictable offense for a person who has built a bridge by contract for a county to knowingly suffer the bridge to remain out of repair, etc., during the period stipulated for its safety

by the contract, does not impair the obligation of contracts in existence before its passage. "The effect of the law is simply to make a specified breach of the contract a penal offense. It *impairs no right* given by the contract, or by the subsisting law, *unless out of the contract there springs a right to break it.* To say that a right *given by* a contract consists of *the privilege of* breaking it, would be an absurdity. We can find no reason upon which to sustain the proposition that the law in question impairs the obligation of the contract. The statute, in consulting for the public good, *has really offered an additional guaranty for the observance of its stipulations.* If it be regarded as *an additional remedy,* designed to enforce the performance of the contract, it would still be upon established principles constitutional."

Blair vs. State, 39 Ala., 353, 355-356.

An act requiring registration of an abstract of judgments as a condition to their constituting liens on property of the judgment debtors is constitutional and valid as applied to judgments in existence when the act was passed although previously such registration was not required.

"An act cannot be said to impair a lien which leaves it entirely at the discretion of the party whether he will preserve it or not. * * * The act effects no change absolutely, or against the consent of the creditor. * * * Individuals cannot be deprived of

their rights, but duties may be imposed on them which are required by public interest and safety."

Tarpley vs. Hamer, 17 Miss., (9 Sm. & sh.) 310, 313.

An act passed subsequent to the execution of a mortgage, the effect of which is to interpose a statute of limitations against the enforcement of the mortgage, where none existed before, does not impair the contract rights of the mortgage. "To the extent that the law in question indirectly renders the statute of limitations available as a bar to the exercise of the power, it grants to the mortgagor a right which did not exist before; but it is too plain to require discussion that the obligation of the contract was not thereby impaired. The statute, in effect, required the creditor to exercise his power of sale within the period allowed for an action to foreclose, and his neglect to do so subjected him to the possible forfeiture of the right, if the debtor saw fit to avail himself of the statutory remedy."

Scott vs. District Court, 15 N. Dak., 259, 268.

An act giving additional remedies to creditors in garnishment proceedings applies to proceedings instituted after the passage of the act, although the cause of action occurred prior thereto. The statute affected *the remedy* only, and did not confer any new rights, or create any new liabilities.

Heineman vs. Schloss, 83 Mich., 153.

An act creating a remedy by an action of forcible detainer may be enforced against a tenant under a lease made prior to the passage of the act. "It is certainly competent for the legislature to furnish a more speedy remedy to punish the wrong of a forcible detention, or to enforce the contract of the tenant by causing him to surrender, although he had made the contract before the act."

Boubaker vs. Poage, 1 T. B. Mon. (Ky.), 123, 128-129.

The law in force at the time a mortgage was executed provided that in foreclosure suits the plaintiff should be entitled to recover such an amount as would be sufficient compensation for his attorney in the case. A subsequent act amended this proviso by limiting the compensation to a sum not exceeding ten per cent of the judgment, and in no case to exceed $25. It was held the amendment did not impair the obligation of the contract, but "pertains to a mere question of costs" and "merely affects the remedy."

County of Kossuth vs. Wallace 60 Iowa, 508.

After a contract for certain construction work had been made, an act was passed, applying to such contracts, providing for foreclosures of the contractor's lien, and giving him the right to recover a reasonable attorney's fee, in addition to the amount due him, with interest, and costs. It was contended that this was

violative of the constitution of the United States in that it increased the liability of one party, and made it more favorable to the other, than it was at the time the contract was made. The court held that the provision in question did not impair any vested right or constitutional guaranty, inasmuch as it simply provided a remedy for the enforcement of a right created by the law in force when the contract was made. It was in fact, simply an extension to the contractor of a remedy which had previously existed in favor of the city.

Dowell vs. Talbot Pav. Co., 138 Ind., 675.

When the law in force at the time a corporation was formed prescribes certain duties to be performed by the corporation, a subsequent statute imposing a penalty for the failure to perform those duties, although no such penalty had existed before, does not impair any corporate rights or otherwise violate the constitution. The corporation had no authority to violate the law in force at the time of its creation; "and hence the statute neither weakened nor impaired any power granted to the corporation." The corporation being bound to comply with the law in force when it was created, "the legislature had authority to compel the observance of this duty by the imposition of penalties for its violation. Such imposition of penalties does not impair the obligation of the contract."

Mob. & Mont. Ry. Co. vs. Steiner, 61 Ala 559, 593-594.

"A distinction must be drawn between those acts of the legislature which come *in aid* of a remedy, and such acts as impose clogs and restrictions upon remedies existing at the time the contract was made. Had the legislature said that the bank should not have process for the collection of her debts, or that the courts should not be open to the complaints of the bank, the case would be wholly different from this, where all that is attempted is to provide for such defects in the existing remedies as the bank had laid hold of to evade payment of her notes."

Vanzant vs. Waddell, 2 Yer., (Tenn.) 258. 264-265.

With reference to an act providing that in all cases in which a policy of insurance contains a reference to the application a copy thereof shall be attached to the policy and that unless so attached no such application shall be received in evidence, the Supreme Court of Pennsylvania said:

"It does not in any sense impair the obligation of the contract between the company and the assured. It does not even impair the remedy. * * * It is a wise and beneficent act, founded upon sound principles of public policy; it affords protection to persons who insure their lives or property, and *can injure no company conducted upon honest business principles.*"

New Era Life Ass'n vs. Musser, 120 Pa. 384. 389-390. ✱

The reasoning of the foregoing cases seems to be unanswerable. We have been unable to find any au-

✱ See also—
Webb v. Dixon, 25 Ind. 4;
Ewell v. Daggs, 108 U.S. 143, 151;
Brooklyn School Trust, 201 N.Y. 238, 37
Curtis v. Whitney, 13 Wall. 6

thority in conflict with them and we respectfully submit that they fully sustain our contention and that the judgment of the Supreme Court of Tennessee should be affirmed. It is submitted further that it is apparent that the writ of error to this court was sued out merely for delay and that the defendant in error should be awarded damages as provided by rule 23, subsection 2 of this court.

ROBERT PRITCHARD AND
J. B. SIZER,
Attorneys for Defendant in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1916.

34

No. [redacted]

SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE,
Plaintiff in Error,

vs.

ANNIE SNYDER,
Defendant in Error.

In Error to the Supreme Court of the State of Tennessee

(32,106)

Brief of Plaintiff in Error in opposition to motion of Defendant in Error to dismiss Writ of Error, and to affirm the judgment.

P. ZIMMERMANN,
Attorney for Plaintiff in Error.

W. H. SMITH & CO., PRS. & STENOG., MEMPHIS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1910

No. 505.

SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE, Plaintiff in Error.

vs.

ANNIE SNYDER, Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

(22,106.)

BRIEF OF PLAINTIFF IN ERROR IN OPPOSITION TO MOTION OF DEFENDANT IN ERROR TO DISMISS WRIT OF ERROR, AND TO AFFIRM THE JUDGMENT.

F. ZIMMERMANN,

Attorney for Plaintiff in Error.

STATEMENT OF THE CASE ON THE MERITS.

In this brief, for convenience, we will refer to the parties as they appeared in the trial court, that is, plaintiff in error, Supreme Ruling, will be called defendant and defendant in error, Mrs. Snyder, will be mentioned as complainant.

Defendant is a fraternal beneficiary association, chartered under the laws of Pennsylvania. Its object, as indicated by its charter, is "to unite fraternally white persons of proper age and good social and moral character * * * for beneficial and protective purposes, collecting dues and assessments from its members, to provide for the payment of (to) its members, or their families, widows, heirs, blood relatives, or other dependents, benefits in case of sickness, disability, or death of its members in compliance with its constitution, laws and regulations." (See opinion of Tennessee Supreme Court, Rec. p. 48.)

In 1887 defendant issued to Chas. G. Snyder, a resident of Chattanooga, a benefit certificate by which it bound itself, on certain conditions therein set forth, at the death of said Chas. Snyder, to pay to his then wife, complainant, Annie Snyder, a sum not exceeding three thousand dollars. (See opinion Tenn. Supreme Court, pp. 48 and 49.)

The laws of defendant association reserved to the assured the right to change beneficiaries. It is well settled that the beneficiary named in a contract of this nature has no vested interest therein, and further that the assured, as well as the beneficiary, are bound by the laws of the association.

> Sofge v. Supreme Lodge, 14 Pickle 452.
> Alfson v. Crouch, 7 Cates 352.

On June 4, 1901, complainant, Annie Snyder, obtained a divorce from her husband, Chas. Snyder (see decree, Rec. p. 43), and on July 1, 1904, her for-

mer husband married Ida M. Forsyth (see certificate of marriage, Rec. p. 21), who was his lawful wife at the time of his death on May 1, 1908. He committed suicide. (Dep. Diak, Rec. p. 23.)

The law of defendant association was as follows:

> "If at the time of the death of a member * * * the designated beneficiary is a husband or wife, and they should be divorced upon the application of either party * * * or if any designation should fail for illegality or otherwise, then the benefits shall be payable to the person or persons mentioned in Class First, Section 11, Law I, if living, in the shares and order of precedence by grades as therein enumerated, the persons living of each preceding grade taking, to the exclusion of all persons living of subsequently enumerated grades." (See laws, Rec. p. 46.)

Class First, Section 11, Law I, named as "Grade First, member's wife or husband." (Ibid.)

From the foregoing statement, uncontradicted in the record, it is very clear—

1. That plaintiff, Annie Snyder, had no further interest in the contract of insurance, from the moment that she obtained her decree of divorce.

2. That, if any person was entitled to the payment of these three thousand dollars, it was the second wife, Ida Snyder, who may now at any time prefer her claim, against which this defendant would have no defense.

The laws of defendant association provided that if a member's health should become impaired or death result directly or indirectly from the use of

opiates or other narcotic poison, etc. * * * the benefit certificate should become null and void. (See laws, Rec. p. 47.) There was strong proof that Chas. Snyder had become a confirmed morphine fiend. (Dep. Ida Snyder, pp. 10 and 11.) This question of fact was found against defendant and we understand that this is not open to review in this Honorable Court.

The theory upon which the bill was filed and sustained was as follows:

In June, 1904, several years after the divorce, and immediately before the remarriage of Snyder, complainant, Annie Snyder, wrote to defendant, stating that she had obtained a divorce, and inquiring to whom the benefit would be paid in the event of the death of the insured. (See letter, Rec. p. 8.) Not having in mind, at the time, the provision of the law in regard to the effect of divorce, nor being informed of the pending remarriage, the highest officers of defendant, in answering the letter, stated:

> "Under the laws of our order, a member has the absolute right to change his beneficiaries at any time so long as the beneficiaries designated by him come within Class First or Second, described in Section 8 of Law No. 1, namely, that the beneficiary must be either a blood relative or a dependent. As the certificate now stands, it would be payable on his death, provided, of course, that the assessments were paid up, to you, and in the event of your death, to his children. I assume from what you write that you are in possession of the certificate. If so, it might be difficult for him to secure a new certifi-

cate unless he should take the position that the old certificate was lost and he would make affidavit to that effect, which would, under our law, entitle him to a new certificate. If you desire any further information in reference to the subject matter, write to me and I will give you all the information at my command.

(Signed) F. H. DUCKWITZ,
Supreme Mystic Ruler."

(See letter, Rec. p. 40.)

It will be noted that the letter of complainant does not mention impending remarriage of her former husband, which, no doubt, caused this correspondence at that particular time. Had complainant informed defendant of this feature, the provision of the law regarding divorced members would have instantly come to his mind. This material fact being suppressed, the officer of defendant made his statement, evidently with the best intention and without careful consideration of the laws.

But the fact remains that he did not inform complainant correctly. Therefore complainant insisted that she was misled, that she continued to pay assessments, and her further insistence, sustained by the Court, was that defendant was estopped from denying the validity of her claim, and that was the theory upon which the case was decided.

Upon this point, the laws of the order provided:

"No officer, employe or agent of the Supreme Ruling, or any subordinate ruling, has the right, or authority, to waive any of the conditions of the benefit certificate, or to change, vary or

waive provisions of the constitution and laws of the Fraternal Mystic Circle. Each and every benefit certificate is issued only upon the conditions stated in and subject to the constitution and laws." (See Rec. p. 48.)

Defendant insists that, under these provisions of the laws, the inadvertence and mistake of its officer could not have affected the contract, nor have worked an estoppel, but that complainant was entitled to the repayment of all moneys paid by her to keep alive the contract, to-wit, $221.83, which was tendered to complainant and brought into the trial court and is there now. (See answer, Rec. p. 7.)

The laws of Tennessee applicable to the questions involved are contained in the Fraternal Insurance Act of 1901, Chapter 113, as follows:

> "Payments of death benefits shall be to the families, heirs, blood relation, affianced husband or affianced wife, or to persons dependent upon the members."

This act was in force when complainant obtained her divorce and when the correspondence took place.

Act, 1905, Chapter 480, provides further:

> "Sec. 6. Be it further enacted, That the payment of death benefits *shall be confined* to the wife, husband, family, relatives by blood, marriage, or legal adoption, affianced husband or affianced wife, or to a person or persons dependent on the member, subject to the limitation and control of the association as to the designation of beneficiaries within said classes."

Complainant is not within the class of persoss to whom benefits could be paid under either of these laws.

If defendant, by the erroneous letter of its officer, could have waived its own laws, as held by the Court, it was not within its power to waive the laws of Tennessee.

(Citing: Cooley's Ins. Brief, 815-816.)

In regard to the provision of defendant's laws denying the power of Mr. Duckwitz to change, waive or vary the laws of the order, the Statute of Tennessee, already referred to, says, at Section 24:

> "Be it further enacted, That the constitution and laws of the association may provide that no subordinate body, nor any of its officers or members, shall have the power or authority to waive any of the provisions of the laws and constitution of the association, and the same shall be binding on the association and each and every member thereof."

Under this provision, could any officer change the law or work an estoppel?

Before stating the matter out of which the Federal question arises, defendant begs leave to restate, upon the merits, the relationship of the parties as shown by the record, and to this end, will reproduce part of the brief used on rehearing in the State Court:

What Was the Contract Between Mr. Snyder and This Defendant?

> "Snyder promised to pay, or cause to be paid, certain monthly contributions, and be governed by all laws. Upon the other hand, the associa-

tion said to Mr. Snyder, we agree to pay upon your death to your wife, Annie Snyder, $3,000, but, if you should be divorced from her, we will not pay this sum to her, but, as provided by our laws, that is to say, if you marry again and do not change your beneficiary, we will pay to your then wife. If you have no wife, we will pay to your children or other relatives, as provided by our laws.

This contract is clear and unambiguous. It is not shown that Mr. Snyder ever waived it or attempted to waive it. Under this contract there can be no controversy on the question that Mrs. Snyder, the second wife, is entitled to this fund, and if she demands it, which she may do at any moment, this defendant will have to pay to her with interest, and the fact that we have paid the amount under the erroneous decree of this Honorable Court to the present complainant, would in no way relieve us from the obligation of our contract to pay it to the rightful owner.

Beyond all doubt, this is a correct interpretation of the contract, and the question is, will this Court force this association to pay this fund to a wrongful claimant, without protection to the association, against the rightful claimant, when the amount to be paid does not come from Mr. Duckwitz, but out of the pockets of the associates of the late Mr. Snyder?

What were the rights of complainant under this contract?

It is settled in Tennessee beyond all question that the beneficiary in a fraternal insurance contract has no vested interest in the certificate. In Sofge v. Supreme Lodge, 14 Pickle 452, this Honorable Court quotes with approval the following:

'Where the right of the payee has no other foundation than the bare intent of the assured, revocable at any moment, there can be no vested interest in the named beneficiary any more than in the legatee of a will before it takes effect. In such a case, the designation of the beneficiary is in the nature of an inchoate or unexecuted gift, revocable at any moment by the donor, and remaining wholly under his control.'

That is exactly the position complainant is in as the first designated beneficiary. She had no vested interest in the certificate. The association was not dealing with her at all. It was dealing with Mr. Snyder, and its contract with him was that it would not pay to a divorced wife. Hence, the moment Mrs. Snyder obtained her divorce, we had the very condition so forcibly set out by this Honorable Court in Alfson v. Crouch, 7 Cates, 352, to-wit, that the first beneficiary had no further interest in the certificate after it has once been surrendered and has no standing in Court to sue upon such a certificate. In that case it is true, the assured voluntarily surrendered the certificate, but the principle is and must be the same where the certificate was annulled by its own terms, as in the present case. Under that case, the complainant has no standing in Court.

Can the fact that complainant paid the monthly dues alter the contract?

It will be observed that no question of estoppel is involved here, as the Court has assumed, but it is merely a question of contract.

In the first place, the association was not dealing with complainant. It was dealing exclusively with the husband, Chas. Snyder. The fra-

ternal laws of Tennessee provide payment by the member. Section 1 of the Act of 1901, Chapter 113, says:

'The fund from which the payment of such benefits shall be made, and the fund from which the expenses of such association shall be defrayed, shall be derived from assessments or dues collected from its members.'

Acts of 1905, Chapter 480, Section 4, provides (on page 1023):

'The funds from which benefits shall be paid, and the funds from which the expenses shall be defrayed, shall be derived from periodical or other payments by the members of the association and accretions of said fund.'

From all of which it appears clearly that the association must look alone to its members for payment, and that its remedy is, to suspend the member if he fails to pay. It follows conclusively that if any other person pays for the member, it is a voluntary payment, which is credited to the member, irrespective of the source of payment, and that the person making the payment derives no right or benefit therefrom.

In Quinn v. Catholic Knights, 15 Pickle 80, it was expressly held that a person who paid all the cost of the insurance did not thereby acquire any rights in the certificate, if he did not come within the classes provided by law, and therefore the certificate was ignored and the fund paid to the widow.

Likewise in Ownby v. Supreme Lodge, 17 Pickle 16, it is held:

'A benefit certificate that names as beneficiary a person not authorized by the charter and laws of the society to receive the benefits is void.

Now we come to the gist of the case.

What was the effect of Mr. Duckwitz's letter on the rights of the parties?

Waiving the suppression of a material fact in the correspondence, that of impending remarriage, it will be noted that Mr. Duckwitz does not assure the complainant that the fund will be paid to her in any event. He informs her distinctly that the insured has a right to change his beneficiary at any time, but he says, if he does not and he remains in good standing, the fund will be paid to you. Certainly his letter was not a decision by which the order was bound. The order had no contractual relation with Mrs. Snyder, and the letter was merely gratuitous advice. And above all, under the laws of Tennessee, Mr. Duckwitz was deprived of any power to change the laws of the association.

But suppose he had had full knowledge of the divorce, what was the situation?

Mrs. Snyder knew, or should have known, that under the contract of Mr. Snyder and the association, to which she was not a party, and in which she had no vested interest, her rights to the fund ceased the moment she obtained her decree of divorce. In the meantime, Mr. Snyder had married his second wife, and under the contract, nothing being done by Snyder, the second wife had the first right to the fund. For all we know, that was the intention of Mr. Snyder, he being a lawyer and knowing the law as he did.

Is it possible, then, that the mere misinformation contained in the letter of Mr. Duckwitz could have had the effect of changing a contract without the knowledge and consent of the person who had full control over the contract, to-wit, Mr. Snyder? And that, in the face of the Ten-

nessee statute denying the power of Mr. Duckwitz to alter the law?

All the possible effect of the letter was to induce complainant to make voluntary payments to be credited to Mr. Snyder, without in any way altering the contract then existing between him and this defendant, and Mrs. Snyder could derive no possible benefit from these voluntary payments so far as her interest in the contract was concerned. (Quinn v. Catholic Knights, *supra.*)

The most that can be said, then, is that Mrs. Snyder paid certain moneys under a mistake, which payments she was not obligated to make, and of which her husband and his lawful beneficiary reaped the benefit. This defendant had no actual benefit and certainly no profit from these payments. They were barely sufficient—and really not sufficient—to pay the cost of the insurance based upon the life expectancy if he had not cut down his expectancy by suicide. Had the payments ceased this defendant would have been relieved from its obligation of the contract. When payments were kept up they were made solely for the benefit of the assured and his then beneficiary, no matter what was in the mind of the party making the payment. Hence all that equity could possibly do would be to order the repayment of the money with interest. But this defendant has voluntarily done that, before the bringing of this suit, and the amount of $221 is now in the registry of the Court, subject to the order of complainant, and in no event is she entitled to more by her inadvertent payments.

The Court speaks of the equities of complainant. What these equities were may be best shown by an illustration. Suppose that Charles

Snyder, after his second marriage, had made application for change of beneficiary, appointing his second wife, would the fact that his first wife had up to that time kept the certificate alive have been any obstacle or would it have been considered?

It is held in Fischer v. Fischer, 15 Pickle 632, that even where there had been a definite contract between the assured and his beneficiaries, by which they assumed payment of assessments on consideration of receiving certain proportions of the fund, the association is not bound thereby, and that the right to change beneficiary remains unaffected. Says the Court, page 636:

> 'Under the prevailing rule, as laid down and recognized by the current of authority and by our own cases, the member's right to dispose of the insurance exists, notwithstanding the beneficiary originally named has paid assessments and incurred expense.'

Considering this and similar cases, the equities of complainant arising out of the payment of assessments by her, dwindle so that they cannot be recognized, and she is doing well by getting back all she has paid in, with interest.

Indeed, it was not necessary at all for Mr. Snyder to make application for a change of beneficiary, if he intended his second wife to have the fund. Being a lawyer and able to construe the laws of this association, he knew that the interest of his first wife in his certificate was extinguished by her divorce, and that, without any action by him, under the contract he had entered into, the fund was payable to his then wife. Can it be possible that by a mere inadvertent correspondence between third parties,

his contract could have been changed and annulled?

The very question here involved has been decided by this Honorable Court in two unreported cases in which the writer was engaged as counsel.

In Cassanova v. Bierstedt (Jackson, about 1898) the facts were as follows:

Eva Cassanova held a benefit certificate for two thousand dollars in the Knights and Ladies of Honor, payable to her husband, Adam Cassanova. Adam died, leaving surviving him his widow and two children. Thereafter Eva married defendant, Bierstedt, and died a few weeks thereafter, without having changed her certificate, which still was payable to Adam Cassanova. The children of Adam insisted that the fund belonged to them. Held, that when the first designation of beneficiary failed, the certificate went back to the insured; that when she died without having made another designation, the fund was payable under the laws of the order, first to the husband. And there being a husband by the second marriage, the fund was awarded to him.

The other case is McCarver v. McCarver (Jackson, about 1901). Arch McCarver held a benefit certificate in the Knights of Pythias for $2,000, payable to his wife. She died, leaving children. Subsequently McCarver married Lizzie, his second wife, and died without having made a change of beneficiary. The children of the first wife claimed the fund. Held, that where the first designation failed, and no other designation was made, the fund would go according to the laws of the order, the wife being first. Accordingly, the second wife took the fund.

> The only difference between these cases and the case at bar is that there the designation failed by death, while here it fails by the operation of the law and the terms of the contract, but the principle is exactly the same, and under these cases complainant has no right whatever to the fund."

The Supreme Court of Tennessee says in its opinion:

> "Certainly, on these facts, there is a strong equity in complainant's favor, which the defendant should not be permitted to repel, unless it can interpose some legal objection which the Court is without power to disregard."

We insist that we have interposed legal objections, which the Court was without power to disregard and that the defense was complete and conclusive.

The Federal Question.

Defendant understands that, no matter how erroneous a judgment of a State Court may have been, this Honorable Court has no jurisdiction to review the case, unless it presents a Federal question. The Federal question now relied upon arises in the following manner:

It will be remembered that the original contract of insurance was made in 1887 with a citizen of Tennessee.

In 1901, the Legislature of Tennessee passed an act, entitled "An Act to impose additional liability upon insurance companies and other corporations, firms or persons, for failure to promptly pay insurance losses and a liability upon policy holders where suits are not brought in good faith."

The first section of this act is as follows:

> "Section 1. Be it enacted by the General Assembly of the State of Tennessee, That the several insurance companies of this State and foreign insurance companies and other corporations, firms or persons doing an insurance business in this State, in all cases when a loss occurs and they refuse to pay the same within sixty days after a demand shall have been made by the holder of said policy on which said loss occurred, shall be liable to pay the holder of said policy, in addition to the loss and interest thereon, a sum not exceeding twenty-five per cent on the liability for said loss; Provided, that it shall be made to appear to the Court or Jury trying the case that the refusal to pay said loss was not in good faith, and that such failure to pay inflicted additional expense, loss or injury upon the holder of said policy; and, provided further, that such additional liability within the limit prescribed shall, in the discretion of the Court or Jury trying the case, be measured by the additional expense, loss and injury thus entailed."

This act, passed many years after the contract had been made, was applied to the case, and in the face of the record, as herein detailed, showing not only that the defense was made in good faith; but that it was a complete and conclusive defense, the trial court assessed the extreme additional liability, to-wit, seven hundred and fifty dollars, and the Supreme Court sustained the finding with interest. We insist that the *additional liability imposed by the act impaired our contract.*

Defendant raised the question of the constitutionality of the act as applied to the case at bar, as shown

by assignment of error to the Supreme Court of Tennessee. (See Rec. p. 45.) The question was considered by the Supreme Court of Tennessee and decided in favor of the constitutionality. The decree of Supreme Court recites (See Rec. p. 58):

> "That said judgment to the extent of the 25 per cent penalty, amounting to $750.00, was allowed and affirmed under the provisions of Ch. 141 of the acts of the Legislature of 1901, and the Court holds and especially adjudges that said act is constitutional and does not violate the Constitution of the State or of the United States, especially Article 1, Section 20, and Article 2, Section 2, of the Constitution of the State, and Article 1, Section 10, of the Constitution of the United States, and said act does not impair the obligation of the contract."

The foregoing decree raises, broadly, the constitutionality of the act as applied to the present case, and fully justifies the assignment of error under which this Honorable Court will take jurisdiction, as follows:

ASSIGNMENT OF ERRORS TO THE SUPREME COURT OF THE UNITED STATES.

Now comes the Supreme Ruling of the Fraternal Mystic Circle, plaintiff in error, and makes and files its assignment of errors.

I.

The Supreme Court of Tennessee erred in not dismissing the bill herein insofar as it prayed for the

assessment of a penalty, for the reason that such penalty, as applied to defendant in that suit, was and is in violation of Article 1, Section 10, and of Section 1 of the Fourteenth Amendment, of the Constitution of the United States.

II.

The Supreme Court of Tennessee erred in not rendering a decree dismissing the entire bill and in holding the defendant therein liable under its contract of insurance, when, under the laws of defendant association, by which members and beneficiaries are bound, a divorce operated as an annulment of the designation of beneficiary, and prohibited the payment of the benefit to a divorced wife.

Upon the motion now before the Court, to dismiss and quash the writ of error for want of jurisdiction, and other defects, and to affirm the judgment of the Supreme Court of Tennessee, defendant will discuss only the first assignment of error, which is conclusive on this motion.

BRIEF OF DEFENDANT (Plaintiff in Error).

The practical effect of Tennessee Act of 1901, Chapter 141, is to impose an "added liability" of twenty-five per cent on every insurance contract upon which suit is defended unsuccessfully. The contract herein antedated the statute by some twelve years. The Federal question under Article 1, Section 10, of the Constitution was properly raised.

Record p. 58.

Hence this Court has jurisdiction in any event. This is admitted by complainants. The Tennessee Supreme Court has found generally that the act was good on attack under the Federal Constitution. The Fourteenth Amendment was necessarily considered in the decision of the case by the State Supreme Court. Therefore the Court has jurisdiction on this point.

Murray v. Charleston, 96 U. S. 432.
New Orleans Waterworks Co. vs. La. Sugar Ref. Co., 125 U. S. 31.
Spencer v. Merchant, 125 U. S. 352.

The assessment of attorneys' fees by way of penalty against an unsuccessful defendant violates the Fourteenth Amendment.

Gulf, etc., R. R. Co. v. Ellis, 165 U. S. 150.
Atchison, etc., R. R. Co. v. Mathews, 174 U. S. 96.

The State Courts are in conflict on this proposition,, but the weight of authority is that such acts are

invalid. Among the many decisions supporting that view are:

Builders Supply Depot v. O'Connor, 150 Cal. 265, 88 Pac. 982.

Grand Rapids Chair Co. v. Runnels, 77 Mich. 104, 43 N. W. 1006.

Wilder v. Chicago R. R. Co., 70 Mich. 382, 38 N. W. 289.

Openshaw v. Halfin, 24 Utah 426, 68 Pac. 138.

Durkee v. Janesville, 28 Wis. 464.

Joliffe v. Brown, 14 Wash. 155, 44 Pac. 149.

Paddock v. Mo. Pac. R. R., 155 Mo. 524, 56 S. W. 453.

Sheet v. Chicago R. R., 70 Mich. 433, 38 N. W. 291.

Rinear v. Grand Rapids R. R., 70 Mich. 620, 38 N. W. 599.

Lafferty v. Chicago R. R., 71 Mich. 35, 38 N. W. 660.

Denver, etc., R. R. v. Outcalt, 2 Colo. App. 395, 31 Pac. 177.

Phoenix Ins. Co. v. Hart, 112 Ga. 765, 38 S. E. 67.

Phoenix Ins. Co. v. Schwartz, 115 Ga. 113, 41 S. E. 240.

Williamson v. Ins. Co., 105 Fed. 31.

South & North Ala. R. R. v. Morris, 65 Ala. 193.

Chicago, etc., R. R. v. Moss, 60 Miss. 641.

St. Louis, etc., R. R. v. Williams, 49 Ark. 492.

Randolph v. Supply Co., 106 Ala. 501, 17 So. 721.

Mannix v. Tryon, 152 Cal. 31, 91 Pac. 983.

Merced Lumber Co. v. Braschi, 152 Cal. 372, 92 Pac. 844.

Davidson v. Jennings, 27 Colo. 187, 60 Pac. 354.

Antlers Park, etc., Mining Co. v. Cunningham, 29 Colo. 284, 68 Pac. 226.

Los Angeles Gold Mine Co. v. Ca[illegible]oell, 13 Colo. App. 1, 56 Pac. 246.

Perkins v. Boyd, 16 Colo. App. 266, 65 Pac. 350.

Atkinson v. Woodmansee, 68 Kan. 71, 74 Pac. 640.

Brubaker v. Bennett, 19 Utah 401, 57 Pac. 170.

Chicago, etc., R. R. v. Mashore (Okla.), 96 Pac. 630.

Hocking Valley Coal Co. v. Rosser, 53 Ohio St. 12, 41 N. E. 263.

There is no good reason why insurance companies alone should be punished for not paying their debts. Compelling the payment of debts is not a police regulation.

Atchison, etc., R. R. Co. v. Matthews, 174 U. S. 96.

Wherever statutes of this nature, as applied to contracts, have been upheld, it was distinctly upon the principle that the statute was in existence when the contract was made and therefore entered into the contract. It is different here.

Fidelity Mut. Life Ass. v. Mettler, 185 U. S. 308.

Orient Ins. Co. v. Daggs, 172 U. S. 557.

St. Louis, etc., R. R. v. Paul, 173 U. S. 409.

John Hancock Ins. Co. v. Warren, 181 U. S. 73.

New York Life Ins. Co. v. Craven, 178 U. S. 389.

Iowa Life Ins. Co. v. Lewis, 187 U. S. 344.

When the statute of 1901 was passed, assessing "added liability," on insurance contracts, defend-

ant had a right to withdraw from the State and refuse to make new contracts. But it could not withdraw from contracts then in existence. As to these contracts, the imposition of added liability was an impairment of the contract.

Bedford v. Eastern B. & L. Ass'n., 181 U. S. 227.

Defendant does not claim a vested right in any particular remedy or mode of procedure, but a right to an existing defense is property in the sense that it is incompetent for the Legislature to take it away.

Pritchard v. Norton, 106 U. S. 124.

If the Legislature can arbitrarily add twenty-five per cent to the obligation of an existing contract at what point must it stop? It may, under the same authority, add five hundred per cent.

Barnitz v. Beverly, 163 U. S. 118.

The power to tax involves the power to destroy. The power to modify at discretion the remedial part of a contract is the same thing.

Edwards v. Kearzey, 96 U. S. 595.

Defendant does not deny that the Legislature may change remedies. "Whatever belongs merely to the remedy may be altered according to the will of the State, provided the alteration does not impair the obligation of the contract. But if that is produced, it is immaterial whether it is done by acting on the remedy, or directly on the contract itself. In either case, it is prohibited by the Constitution." Chief Justice Taney in Bronzon v. Kinzie, 42 U. S. 311.

McCracken v. Haywood, 2 Howard 608.

Howard v. Bugbee, 65 U. S. 461.

Brine v. Hartford F. Ins. Co., 96 U. S. 627.
Shapley v. San Angelo, 167 U. S. 657.
Edward v. Kearzey, 96 U. S. 595.
Seibert v. Lewis, 122 U. S. 284.
Re City Bank of New Orleans, 3 How. 272.

Among the multitude of State cases supporting this principle, we refer to:

Commoner's Court v. Rather, 48 Ala. 447.
County Com. Court v. King, 13 Fla. 476.
Robinson v. Magee, 9 Cal. 85.
Wilder v. Lumpkin, 4 Ga. 220.
Temple v. Hays, — Morris 12.
Long v. Walker, 105 N. C. 98.
State v. McPeak, 31 Neb. 143.
Foltz v. Huntley, 7 Wend 216.
Bank of Dom. v. McVeigh, 20 Gratt. 466.
Roberts v. Cocke, 28 Gratt. 215.
Mundy v. Monroe, 1 Mich. 71.
Swinburne v. Mills, 17 Wash. 619.
Goggans v. Turnipseed, 1 S. C. 82.
Jacoway v. Denton, 25 Ark. 641.
Homestead Cases, 22 Gratt. 287.

The fact that the act tends to enforce the contract is immaterial if thereby the contract is impaired. Both parties have fixed rights under a contract, and the rights of neither party can be impaired.

McCracken v. Haywood, 2 How. 608.
Bedford v. Eastern B. & L. Ass'n, 181 U. S. 227.
Wade on Retroactive Laws, Sec. 115.

ARGUMENT.

The main contention of this defendant that the imposition of additional liability by a statute upon a contract entered into before the enactment of the statute impairs the obligation of that contract appears to be a question of first impression. Diligent search has failed to produce a case involving the exact question.

Both State and Federal Courts have in many instances examined the constitutionality of added costs or attorneys' fees by way of penalty under the "due process of law" and "the equal protection of the laws" clauses of the Fourteenth Amendment of the Constitution of the United States. But these decisions do not affect the present question, because a great majority of the cases arose out of tort, and, where a contract was the basis of the suit, it appeared invariably that the statute attacked antedated the contract. Nor can it be said that the question is settled as raised under the Fourteenth Amendment. Indeed, the weight of authority seems to be against the constitutionality of statutes of this description. For numerous authorities supporting this view, see cases cited in fourth paragraph of brief, which decisions might be multiplied indefinitely.

The same question has repeatedly been before this Honorable Court, with varying results.

In the leading case of Gulf, etc., R. R. Co. v. Ellis, 165 U. S. 150, 41 L. E. 666, the assessment of attorney's fees against a railroad is condemned, as deny-

ing the equal protection of the laws. Many cases are cited to support the decision, three of the justices dissenting.

While upholding the principle of the Ellis case, a distinction is made in Atchison, etc., R. R. Co. v. Matthews, 174 U. S. 96, 43 L. E. 909. The Court adheres to the view that:

> "There is no good reason why railroad corporations alone should be punished for not paying their debts. Compelling the payment of debts is not a police regulation."

But, says the Court, to distinguish the cases:

> "The purpose of this statute is not to compel the payment of debts, but to secure the utmost care on the part of the railroad companies to prevent the escape of fire from moving trains."

Four of the justices, Messrs. Harlan, Brown, Peckham and McKenna, dissent and adhere to the Ellis case.

Applying that case to the case at bar, it would appear that, because the object of the present statute is to compel payment of debts, it would fall under the decision of the Ellis case and that the statute is unconstitutional under the Fourteenth Amendment.

Next we have the case of Fidelity Mutual Life Ass. v. Mettler, 185 U. S. 308, 46 L. E. 922, the first case where the principle was applied to an insurance contract. The Texas statute assessed a penalty of twelve per cent against a life insurance company failing to pay promptly. The contention was made that the statute violated the equal protection of the law

clause, because it applied only to a certain class of insurance companies. The statute was upheld principally upon the ground that defendant was a foreign corporation which came to Texas with knowledge of existing laws, and that by accepting the permission to do business in that State, it agreed to all the laws of the State. The Court holds that "the statute formed a part of every contract of the defendant made in the State." Mr. Justice Brewer concurred in the result and Messrs. Harlan and Brown enter a most vigorous dissent, in which it is said in answer to the question whether this statute violates the Fourteenth Amendment:

> "It seems to me that this question must be answered in the affirmative if any regard whatever be had to the principles announced in Gulf, etc., vs. Ellis."

It may be remarked that this case is no precedent for the case at bar, because the statute of Texas was passed in 1874, and codified in 1895, while the policy was issued in October, 1896. It may likewise be pointed out that the Court in speaking of classification found it proper to apply a different rule to lodges and associations of mutual benefit or benevolent character, to which latter class the present defendant belongs.

In the foregoing case, the Court cites Orient Ins. Co. v. Daggs, 172 U. S. 557, 43 L. E. 552, involving a Missouri statute which provided that a fire insurance company should be bound by the value of the insured property as given in the policy. In uphold-

ing the statute the Court emphasized that it operated solely upon future contracts.

The same stress was laid upon the prospective operation of the statute in St. Louis, etc., R. R. v. Paul, 173 U. S. 409, 43 L. E. 746, involving the validity of the Arkansas statute requiring railroads to pay their employees immediately after discharge.

Again, in John Hancock Ins. Co. v. Warren, 181 U. S. 73, 45 L. E. 755, involving the statute of Ohio destroying the effect of warranties in policies, the decision was based upon the ground that the statute was in existence when the insurance contract was made, and therefore, was to all intents and purposes, written into the policy.

To the same effect see New York Life Insurance Company v. Cravens, 178 U. S. 389, 44 L. E. 1116.

The case of Iowa Life Insurance Co. v. Lewis, 187 U. S. 344, 47 L. E. 821, again involved the statute of Texas which had been in existence upwards of twenty years at the making of the contract, but the case was reversed.

Complaint in the present case cites Farmers, etc., Ins. Co. v. Dobney, 187 U. S. 344, 47 L. E. 821, sustaining the assessment of an attorney's fee under the statute of Nebraska, attacked under the Fourteenth Amendment. This is the only case found where it does not affirmatively appear that the statute was in existence at the time the contract was made. But, inasmuch as the loss was upon a fire policy, of short duration, this may be presumed. At any rate, no

question is made in that case regarding the impairment of a contract.

In none of the cases mentioned was the Court unanimous on the question of the violation of the Fourteenth Amendment, so that we are justified in saying that the question is still open. And in none of the cases cited in this brief, nor in that of opposing counsel, do we find the question now made, that

The Statute of Tennessee Impairs the Obligation of This Particular Contract.

As stated, the contract was made in 1887, the statute was passed in 1901. If the defendant made a contract in Chattanooga, Tennessee, in 1887, defendant was lawfully in Tennessee at that time, nothing to the contrary appearing in the record. It made a Tennessee contract, and under the authorities cited, the laws of Tennessee, as then existing, were part of the contract, as fully as if they had been written into the contract. Under these laws, as so impliedly written into the contract, the courts of Tennessee were open to defendant to defend against an action upon this contract on the same terms with every other defendant, that is, at the peril of having to pay ordinary court costs in the event that the defense should be unsuccessful. Now, the Legislature of Tennessee steps in and says in effect: If you dare to question the right of any person to demand of you payment under this contract and permit yourself to be sued, and you fail to sustain your defense, you will have to pay, in addition to the three thousand dollars mentioned in your contract, together with interest

and costs, the additional liability of seven hundred and fifty dollars which you have never contracted or agreed to pay, but which we will impose nevertheless. In other words, in place of the three thousand dollars which you have agreed to pay, we will now make you pay three thousand, seven hundred and fifty dollars with interest and costs.

Can there be any question that this is making a new contract between the parties, to which neither had assented, which neither party could have foreseen when the contract was made, and that the law imposing additional liability, as applied to this contract, is an impairment thereof.

When the statute of 1901 was passed, defendant company had a right to elect whether it cared to do further business in Tennessee with this additional liability imposed, and if, thereafter, it made any new insurance contracts in the State, it may well be that the new statute was written into every such new contract. But as to any old contract then in existence, defendant could not have avoided the obligation thereof by merely going out of the State. It was bound to perform the contract as made, and the contract as made did not include any additional liability in case of defense in court. The contract, by this statute, was changed so as to give complainant seven hundred and fifty dollars more than the contract called for, without the consent of defendant obtained in any way, and in violation of the pre-existing right to defend in Court without added liability.

It may be true that a right to a particular remedy is not a vested right, and that there is no vested

right in a particular mode of procedure, but, a vested right of action, or a vested right to an existing defense, are property in the sense that it is incompetent for the Legislature to take them away.

Pritchard v. Norton, 106 U. S. 124, 27 L. E. 107.

In Barnitz v. Beverly, 163 U. S. 118, 41 L. E. 99, involving a change of law relating to the enforcement of mortgages, the Court says, speaking through Mr. Justice Shiras:

> "If such rights may be added to the original contract by subsequent legislation, it would be difficult to say at what point they must stop."

So we say here, if the Legislature of Tennessee had a right to add twenty-five per cent to the original contract, it had a right to add fifty per cent, one hundred per cent or five hundred per cent, and it could still be insisted that this was no impairment of the contract.

In the foregoing case, the Court cites Bronson v. Kinzie, 42 U. S. 311, 11 L. E. 143, where Chief Justice Taney says:

> "Whatever belongs merely to the remedy may be altered according to the will of the State, provided the alteration does not impair the obligation of the contract. But if that effect is produced, it is immaterial whether it is done by acting on the remedy or directly on the contract itself. In either case, it is prohibited by the constitution."

Again in the same case, the Court refers to McCracken v. Haywood, 2 Howard 608, 11 L. E. 399, where it is said:

> "In placing the obligation of contracts under the protection of the constitution, the framers looked to the essentials of the contract more than to the forms and modes of proceeding by which it is to be carried into execution; annulling all State legislation which impaired the obligation, it was left to the State to prescribe and shape the remedy to enforce it. The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and forming a part of them as the measure of the obligation to perform them by the one party, and the right acquired by the other. There can be no other standard by which to ascertain the extent of either, than that which the terms of the contract indicate, according to their settled legal meaning. When it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force. If any subsequent law affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract, in favor of one party, to the injury of the other; hence any law, which in its operation, amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the constitution.

Howard v. Bugbee, 65 U. S. 461, 16 L. E. 753.

Brine v. Hartford F. Ins. Co., 96 U. S. 627, 24 L. E. 858.

Shapleigh v. San Angelo, 167 U. S. 657, 42 L. E. 314.

Edwards v. Kearzey, 96 U. S. 595, 24 L. E. 793.

In the last named case, involving a change of exemption laws, the Court says:

> "The power to tax involves the power to destroy. McCallough v. Md., 4 Wheat 416. The power to modify at discretion the remedial part of a contract is the same thing."

In Murray v. Charleston, 96 U. S. 432, 24 L. E. 760, Mr. Justice Strong says:

> "It is one of the highest duties of the Supreme Court to take care that the constitutional prohibition against States impairing the obligation of contracts shall neither be evaded nor frittered away."

New Orleans Waterworks Co. v. Louisiana Sugar Ref. Co., 125 U. S. 31, 31 L. E. 612.

Spencer v. Merchant, 125 U. S. 352, 31 L. E. 766.

The main question now before the Court is definitely settled in Bedford v. Eastern B. and L. Ass'n., 181 U. S. 227, 45 L. E. 834. In that case Bedford, a resident of Tennessee, had applied to become a shareholder in complainant building and loan association of Syracuse, which application was accepted and the stock issued February 2, 1891; this entitled Bedford to a loan on certain conditions. On March 20, 1891, he presented his application for a loan. On March 26, 1891, the Legislature of Tennessee passed

an act regulating the admission into the State of foreign corporations and more especially of foreign building and loan associations. Complainant building and loan association never complied with this statute. On May 12, 1891, the loan was granted and a mortgage taken from Bedford. Thereafter Bedford failed to make the payments contracted for, and then resisted the attempt to foreclose the mortgage upon the ground that the contract was not authorized by the laws of Tennessee on account of non-compliance with the Tennessee law governing foreign building and loan associations, and, for this reason, could not be enforced. Says the Court, speaking through Mr. Justice McKenna:

> "The question is, Did the subscription to the stock of the association, its issuance, and the application for a loan in pursuance of it, constitute a contract which was inviolable by the State Legislature? We think the answer should be in the affirmative. By his subscription to the stock of the association Bedford became a member of the association, bound to the performance of what its by-laws and charter required of him, and entitled to exact the performance of what its by-laws and charter required of the association. Each acquired a right to what the other promised, and there were all the elements of a contract. We are compelled to disagree with the views presented by the Supreme Court of Tennessee, etc."

In the case at bar, the parties to the contract agreed to do certain things, no more and no less on either side. Each acquired a right to what the other

promised, and no after enacted law of Tennessee could affect the contract.

As the Court says in the foregoing case, the defendant herein might justly have declined to do business in the State under the condition imposed by the Act of 1901. It might have retired from the State, and from all it had the option to retire from. But it could not retire from the execution of its contracts then in existence. * * * The State could not affect that obligation nor impair it. The obligation of the contract is the law which binds to perform their agreement.

> "We recognize the power of the State to impose conditions upon foreign corporations doing business in the State. We have affirmed the existence of that power many times, but manifestly it cannot be exercised to discharge the citizens of the State from their contract obligations."

In Seibert v. Lewis, 122 U. S. 284, 294, 30 L. E. 116, the Supreme, Court, speaking through Mr. Justice Matthews, says:

> "It is well settled by the decisions of this Court, that, the remedy subsisting in a State when and where the contract is made and is to be performed, is a part of its obligation, and any subsequent law of the State which so affects that remedy as substantially to lessen the value of the contract is forbidden by the constitution, and is therefore void."

A law given a retroactive effect is unconstitutional if it so changes the existing remedies as materially to

impair the rights and interests of a party to a contract.

Re City Bank of New Orleans, 3 How. 292, 11 L. E. 603.

Auffm' Ordt v. Rasin, 102 U. S. 620, 26 L. E. 262.

From the foregoing authorities we insist that the statute of Tennessee imposing additional liability upon insurance companies, if applied to a pre-existing contract, is an impairment of that contract and therefore void.

We will devote the rest of this argument to a

Reply to the Points Made by Complainant.

It is admitted by the brief of complainant that Article 1, Section 10, of the constitution of the United States, relating to the impairment of contracts, is properly raised and open to review in this cause. If so, the motion to dismiss and affirm the decree below must be denied.

But complainant further insists that the Fourteenth Amendment has not been properly raised, and that the writ of error should be dismissed as to any question arising under that amendment.

In Murray v. Charleston, 96 U. S. 432, 24 L. E. 760, it is said:

> "The true test of the jurisdiction of this Court over State judgments is not whether the record exhibits an express statement that a Federal question was presented, but whether such a question was decided, and decided adversely to the Federal right."

In the present case, the Supreme Court of Tennessee certifies that it has examined the Act of 1901 upon its constitutionality and finds generally that the act is constitutional and does not violate the constitution of the State or of the United States. (Rec. p. 58.)

The Fourteenth Amendment was necessarily involved in that decision, and under the authority above cited, this Honorable Court is authorized to examine the question whether the decree complained of violates the "due process of law" and the "equal protection of the law" clauses, as we insist it does.

The facts upon which the courts have sustained State laws against attack under the foregoing clauses of the Fourteenth Amendment are entirely different from those shown in the case at bar. Therefore the question should be re-axamined. We admit, however, that our main reliance in this cause is the impairment of the contract, which is, admittedly, before the Court.

Complainant further objects to the consideration of the whole case under the second assignment of error. We do not care to argue that question until we get to the hearing on the merits. If a single Federal question is properly raised and before the Court —and that is admitted by complainant—then the motion to dismiss must be denied, and the cause will be heard.

Agreeing now with complainant—but solely for the purpose of argument in the present motion—that the only question before the Court is the impairment

of the contract, we beg to reply to the reasons given in the brief of complainant, why the contract is not impaired.

It is insisted that the manifest purpose of the act is to *strengthen*, and not to *impair* the obligation of the contract. And in this connection stress is laid upon the finding of "bad faith" required by the statute, and it is argued that a delinquent insurance company which fraudulently and in bad faith refuses to pay its just obligations, has no ground of complaint because it is charged with the ordinary fees and expenses of a law suit, entailed by its fraudulent conduct.

This is an argument which might be quite effective before an ordinary jury, but will not impress men of the perception and learning composing this Honorable Court. This Court will look beyond the wording of the statute and consider the effect. In Yick Wo v. Hopkins, 118 U. S. 356, 30 L. E. 220, the ordinance of San Francisco was fair upon its face, but resulting in a denial of equal justice, it was condemned.

The statute of Tennessee, apparently fair upon its face, has the practical result that in every case where a defense in an insurance case is unsuccessful, the "added liability" will be imposed, because the finding of the Court or jury against defendant is prima facie sufficient to show that the defense was not made in good faith, thus destroying the natural and necessary presumption that a defendant who exercises his right to make defense against a demand at the peril of having to pay the ordinary court costs and his own lawyers' fee is acting in good faith.

This is well illustrated by the case at bar. Here the complainant, as a divorced wife, was absolutely barred from claiming the fund, both under the laws of the defendant association and under the laws of Tennessee. The decree rendered imposes double liability upon defendant, because, unquestionably, the second wife is entitled to the fund, and if she sues in Tennessee, defendant will no doubt be onerated with another seven hundred and fifty dollar liability. The decree rests upon the utterly erroneous application of the doctrine of estoppel, holding that the acts of a third party, having no vested interest in a contract, may change the contract between the two parties who made it. In addition to that, there was strong proof that the assured was a confirmed morphine fiend, and his habits in this regard directly led to his suicide, by which he cut off the life-expectancy upon which the insurance contract was based. Not alone was the defense made in good faith, but defendant was entitled to have the bill dismissed in its favor, and nothing but total disregard of well established legal principles defeated that result. Yet the learned trial court added the extreme amount of liability permitted by the statute and the Honorable Supreme Court sustained the decree.

We repeat that if the State had the right to add twenty-five per cent to the obligation of a pre-existing contract, it had a right to add one hundred per cent or five hundred per cent to the amount due and it would still be within the constitutional provision

against impairment of contracts, because it merely changed the remedy.

Barritz v. Beverly, 106 U. S. 124.

Nor is the contention that the statute strengthens the obligation of any force. There are always two parties to the contract and each party has rights which cannot be impaired.

> "Impairment of the obligation of a contract may be either by discharging one of the parties from the fulfillment of its terms, or it may be by adding to the burdens imposed upon the obligor, and making its conditions more favorable to the obligee."
>
> Wade on Retroactive Laws, Section 115.

In McCracken v. Haywood, 2 Howard 608, there is a clear recognition of the mutual obligation. "The laws," says the Court, "are necessarily referred to in all contracts, and form a part of them as the measure of the obligation to perform them by the one party, and the rights acquired by the other. * * * When it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force."

And the Court concludes that any changing of the rights or duties, though professing to act only on the remedy, is directly obnoxious to the constitution.

In Bedford v. Eastern B. and L. Ass'n., 181 U. S. 227, this Court, overruling the Supreme Court of Tennessee on the same point involved here, says:

> "Each (of the contracting parties) acquired a right to what the other promised."

Some stress is laid in the brief of the complainant upon the provision of the statute that either party is affected equally and that a complainant who brings a suit in bad faith must likewise "pay the piper." From the writer's experience as a trial lawyer, he is ready to assert that there never will be a case where court or jury will assess "added liability" to a complainant who sues a foreign insurance company, however barefaced the attempt may be. But, assuming the possibility of a plaintiff being mulcted in that manner on a pre-existing contract, is it not evident that he could and would successfully claim that his right to bring suit without "added liability" in pursuance of his pre-existing contract was impaired? If so, the right is impaired against the defendant.

It is further insisted that, unless defendant has a vested right to act dishonestly and in bad faith, it cannot be maintained that the act has deprived him of a vested right.

We have already answered this argument by saying that it may duly impress a jury, but will fail with this Court. It begs the question. It presupposes that every defendant is dishonest in making a defense, where the opposite presumption is natural and necessary to a well ordered administration of the law. And the argument is reduced to an absurdity when applied to the facts in the case at bar.

The case of Curtis v. Whitney, 13 Wall 65, 20 L. E. 513, has no application here. The Legislature had passed an act requiring a purchaser under a tax sale

to give the occupant of the land notice, before he could apply for his deed. Held, that this was a proper and human exercise of legislative power, that it deprived the purchaser of no right and was, therefore, no impairment of a contract.

Satterle v. Matthewson, 2 Peters, 380, falls in the same category. Mrs. Matthewson, a resident of Connecticut, was the owner of land in Pennsylvania under a Connecticut title and leased the land to Satterle, who thereafter claimed the land as his own. On suit in ejectment, the State Supreme Court held that the relationship of landlord and tenant could not exist between persons holding under a Connecticut title. This defect of the law was remedied by legislation, whereupon Mrs. Matthewson recovered her property, and was sustained by the court of last resort. This case is authority and is cited in a multitude of cases involving statutes curing defective acknowledgments, defective bond issues, defective charters, etc., and has no application to the case at bar.

It is hardly necessary to discuss the great case of Sturgis v. Crowninshield, 4 Wheat 118. The insolvency act of New York was declared unconstitutional as impairing the obligation of contracts, but the abolishment of imprisonment for debt was approved, because it was not part of the contract, and as is said in subsequent cases, it merely removed a blot upon our civilization. The Court in that case makes a distinction between the obligation of a contract and the remedy. The remedy may be changed at the discretion of the Legislature, provided the change does

not impair the obligation. Among the many cases where a change of remedy has been held unconstitutional, we cite:

Commissioners Court v. Rather, 48 Ala. 447, holding that municipal bonds cannot be impaired by laws postponing the date of redemption; County Commissioners v. King, 13 Fla. 476, holding void a law limiting taxes to an amount insufficient to meet such bonds; Robinson v. Magee, 9 Cal. 85, 70 Am. Dec. 641, denying the power of the Legislature to enact that county warrants not presented before a certain day shall be void; Wilder v. Lumpkin, 4 Ga. 220, denying the retroactive operation of a law providing that sureties upon appeal and injunction bonds need not be made parties to writs of error; Temple v. Hays, Morris 12, of a law providing that fraud may be set up against a note in the hands of an innocent purchaser; Long v. Walker, 105 N. C. 98, 10 S. E. 859, of a repealing statute, providing that prevailing parties in actions on contract shall not recover costs; State v. McPeak, 31 Neb. 143, 47 N. W. 692, of a statute repealing a law which provided that lessees should have power to choose one of the appraisers to value the property at the expiration of the lease; Foltz v. Huntley, 7 Wend. 216, of law disannulling covenants in a lease; Bank of Dominion v. McVeigh, 20 Gratt, 466, of a law authorizing the satisfaction of debts in Confederate currency; Roberts v. Cocke, 28 Gratt. 215, of a statute conferring upon Courts the power to remit interest upon contracts; Mundy v. Monroe, 1 Mich. 71, 76, of a law prohibiting an action of ejectment by a mortgagee

until after foreclosure; Swinburne v. Mills, 17 Wash. 619, 61 Am. St. Rep. 938, 50 Pac. 491, of a statute repealing a law which provided for immediate sale of mortgaged land, upon default of a mortgagor; Goggans v. Turnipseed, 1 S. C. 82, 98 Am. Dec. 398, of a law providing that debts due upon open accounts shall bear interest. State Constitutions have also been held to be subject to the rule thus limited, and when such Constitutions, while purporting to modify a remedy, in fact impair the obligation of existing contracts, they are repugnant to the Federal Constitution and void. Jacoway v. Denton, 25 Ark. 641; Homestead Cases, 22 Gratt, 287, 288, 12 Am. Rep. 514, 515.

In Antoni v. Greenhow, 17 Otto 769, the fact that a state is not sueable entered largely into the decision, but the Court held that the change of the Virginia law relating to bonds being receivable or taxes left ample remedy for the enforcement of the payment of the coupons, and was, therefore, not an impairment of the State contract.

We submit that if the bondholder had been onerated with added liability to the extent of twenty-five per cent the result would have been different.

Defendant is not complaining of any additional remedy given to complainant, but it objects that the statute arbitrarily adds a liability of twenty-five per cent to the pre-existing contract, which is an entirely different matter, though it is disguised as a remedy.

Sampeyreac v. United States, 7 Pet. 222, 8 L. E. 665, involved an Act of Congress affecting a remedy

by reviewing a right of appeal which had previously lapsed, where the decree appealed from was obtained by fraud, perjury and forgery. The act impairs no vested right.

The extract from the opinion of New Orleans & Lake R. R. v. Louisiana, 157 U. S. 219, 39 L. E. 679, shows upon its face that it is not applicable to the case at bar.

Complainant's brief cites copiously from League v. Texas, 184 U. S. 156, and it seems to defendant that solicitor must have been hard pressed for authority on the present proposition to use that case. In that case, certain proceedings for the collection of taxes were attacked, but not under the impairment clause, but under the due process of law clause. If complainant had used the sentence of the opinion immediately preceding the part cited, it would have shown that the case involved no question such as is presented here. That sentence is:

> "The case, therefore, presented is one of a party admitting that valid taxes have not been paid, who is contesting the manner in which the State shall collect them, and insisting that the only method which it can adopt for such collection is one which has hitherto proved ineffectual."

Then follows what complainant cites in his brief, and who will doubt that what the Court said was right as applied to such a case, but it cannot be applied to the present case.

In addition to that, the record showed that the State had purchased the property in prior sales and

had a perfect title to it, and that the proceedings instituted were merely for the object of permitting complainant to get the title back from the State. The decision is rested on the principle that the State having a perfect title to the property, might impose any condition it desired before it released the property to complainant.

Complainant herein applies the language used in the foregoing case to the case at bar, and we merely say that it is a decided and unwarranted misapplication. The same attempt to torture isolated expressions from decisions of State Courts into authority for complainant is apparent through the rest of the complainant's brief. It seems to the writer that the decision of a State Court is of little weight in deciding the question now presented, because the adverse decision of the highest Court of the State is indispensable to this Court taking jurisdiction. If the decisions of the State Court have any binding or even persuasive force, then we might have dismissed our contention long ago, because the Supreme Court of Tennessee has decided the case against this defendant and in favor of complainant. Nevertheless, this Honorable Court will reverse the State Court, if it finds defendant's contentions justified under the Constitution.

In order to answer complainant's brief fully, we will now refer to the State cases upon which counsel relies.

American Fire Ins. Co. v. Landfare, 56 Neb. 482, does hold as complainant says it does, but no point

was made there on the impairment of a contract. All the Court says is:

> "The fact that this policy in suit was issued before the act was adopted allowing attorneys' fees in actions like the present, is immaterial. The statute in question authorizing the recovery of such fees applies to all policies whether written before or subsequent to the time the act became operative. This was expressly held in Hanover Fire Ins. Co. v. Gustin, 48 Neb. 828."

Turning to the last mentioned case, it appears that the attorney's fee was assessed under Chapter 48, Acts of 1889, the second section of which provided expressly that the act should apply to all policies written or renewed before the act went into effect. But the contention made in that case was not as to the validity of an after enacted law, but upon the point whether the statute applied to a policy where the loss was not total. The Court, construing the whole act together, held that it did, and the question of impairment of contract was never raised or decided in that case, nor in any other Nebraska case.

Complainant refers to Farmers, etc., v. Dobney, 189 U. S. 301, as upholding the very statute mentioned in the foregoing case. But in that case the attack made was distinctly under the equality clause of the Fourteenth Amendment, and could not have been made under the "Impairment" clause of the Constitution, because the act was passed in 1889 and was before the State Supreme Court in June, 1894. (The United States Supreme Court mentions the Act of 1899, a compilation of the statutes having been

made in 1899.) The Dobney case came up before the United States Supreme Court in 1903, and that Court refers to State cases where clearly the policies had been issued after 1889, so that the impairment clause could not have figured in the case. Certainly no mention of it is made in the case.

Chamberlain v. Ins. Co., 55 N. H. 249, involved no question such as is involved here, and was decided distinctly upon the proposition that existing laws enter into all contracts of insurance.

In Woodward v. Winchill, 14 Wash. 394, the Supreme Court of that State applied the penalty for unlawfully holding over after notice to quit to a lease entered into before the passage of the statute. The nature of the penalty is not disclosed. But the Court bases its decision on the ground that an unlawful holding over is not connected with the lease, but is a separate matter regarding which the Legislature might enact laws which do not impair the lease. The Court admits, "That legislation may so change the remedy incident to a contract as to make such change unconstitutional when applied to those contracts executed before its passage." • • • But, "It is only when such remedy is so interwoven with a substantial right flowing from the contract that any change therein will substantially affect the value of the contract, so that rights thereunder will be impaired within the meaning of the provision in the Constitution of the United States and of the State, which prohibits the Legislature from impairing the obligation of contracts." The Court then

holds that the case considered is not such a case. All else in the case is obiter dictum.

In Bryson v. McCreary, 106 Ind. 1, the Court of that State expressly holds that laws operating upon the remedy may be unconstitutional, citing Cooley's Const. Lim. pp. 285, 292, but that in the case then considered, there was no material change in the remedy producing such a result.

Blann v. State, 39 Ala. 353, involved an indictment for knowingly suffering a bridge to remain out of repair. It is sufficient to say that the case only remotely affects the case at bar. The same remark may be made as to Parpley v. Hamer, 17 Miss. 310. And this is certainly so with regard to Scott v. District Court, 15 N. Dak. 259, where no question involved in the present case is decided. The case of Heineman v. Schloss, 83 Mich. 153, involved the pursuance of property fraudulently conveyed, and has no possible application to the case at bar. Boubaker v. Poage, 1 T. B. Monroe (Ky.) 123, could not be found, but from the extract it would appear that it involves the same question treated in Woodward v. Winchill (supra).

In County of Kossuth v. Wallace, 60 Iowa 508 the question involved was whether an attorney's fee for foreclosing a school fund mortgage could be reduced from fifty-two dollars to twenty-five dollars, by a statute enacted after the mortgage was made, but before it was foreclosed. It was held that "a law merely limiting the costs recoverable does not so affect the remedy as substantially to defeat the rights of the creditors."

In Dowell v. The Talbott Paving Company, 138 Ind. 675, the State had passed a front foot improvement law giving the city a lien on abutting property, authorizing foreclosure of the lien and providing for an attorney's fee. Under this law, street improvement work was done. Thereafter, an amendatory act was passed authorizing the contractor to foreclose the lien, coupled with attorney's fees. The contractor brought foreclosure suit. Held that the extension of the city's remedy to the contractor did not create any new right, nor did it impose any new burden on the abutting property.

Mobile, etc., R. R. v. Steiner, 61 Ala. 559, involved a penalty assessed by statute upon a railroad for violation of rate laws. Among many reasons given why this penalty was not unconstitutional, the Court says, that the statute imposing the penalty, at the same time extended certain benefits to the railroad in increased rates; that the benefits had been accepted and that therefore the railroad could not be heard to object to any part of the statute. (p. 594.)

We can see not even a remote application of Vanzant v. Waddell, 2 Yer. 258, to the case at bar.

New Era Life Ass'n v. Musser, 120 Pa. 384, might properly be labeled "Much ado about nothing." An assessment company had issued a policy to defendant, who had failed to pay dues to the amount of $21.63. He was sued before a justice for these dues. A few days before the policy was issued the Legislature had passed an act requiring insurance companies to attach a copy of the application to the pol-

icy and providing that, unless this was done, the application could not be received in evidence. Plaintiff had failed to comply with this act, whereupon defendant objected to the introduction of the application as evidence and was sustained. That is all there is to the case.

Defendant submits, with the utmost confidence, that the complainant's authorities do not meet our contention that the statute of Tennessee involves the impairment of our contract and is therefore void. We submit that, upon reason and authority, we have shown a violation of the provision of Article 1, Section 10, of the United States Constitution. That, therefore, this Honorable Court will not dismiss the writ of error herein, but take jurisdiction and decide the controversy upon the merits.

Respectfully submitted,

F. ZIMMERMANN,

Solicitor for plaintiff in error.

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NUMBER 24.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1911.

SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE, PLAINTIFF IN ERROR,

VS.

ANNIE SNYDER, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

(22,106)

BRIEF OF PLAINTIFF IN ERROR.

F. ZIMMERMAN,
Attorney for Plaintiff in Error.

NUMBER 254.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1911.

SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE, PLAINTIFF IN ERROR,

VS.

ANNIE SNYDER, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

(22,106)

STATEMENT OF THE CASE.

May it Please the Honorable Court:

In this brief, for convenience, the parties will be referred to as they appeared in the State Court, to-wit, Mrs. Snyder, defendant in error, here as complainant, and the Supreme Ruling of the Mystic Circle, plaintiff in error here, as defendant.

The sole question to be submitted to this Honorable Court on this record is, whether a contract of life insurance entered into in 1887, can be affected by a statute of Tennessee passed in 1901, providing for an "added liability" of twenty-five per cent, where the company fails to pay within sixty days after maturity of the contract, defendant's insistence being, that the statute of Tennessee, if applied to this contract, violates the impairment clause of the Constitution of the United States, Article 1, Section 10.

Chas. C. Snyder, then husband of complainant, and defendant company, entered into this contract on November 23rd, 1887, by which the company obligated itself to pay, at his death, to his wife, Annie Snyder, $3,000.00 (Original bill, paragraph II, l. c. p. 2).

Said Chas. C. Snyder died on May 1, 1908 (Original Bill, Paragraph IV. Rec. p. 3). Defendant company denied liability, except as to $221.83, which was tendered and paid into court (Answer paragraph IX Rec. p. 6) and is there now.

Complainant filed her bill in the Chancery Court of Chattanooga, Tennessee, praying for $3,000.00 with interest, and the additional sum provided by the Act of Tennessee of 1901 (Original Bill Rec. 1 to 3).

The defenses set out in the answer were, that complainant had been divorced from her husband, Chas. C. Snyder, in 1904, that he had remarried, and at his death, left a lawful widow, Ida F. Snyder. That, under the terms of the contract, the divorce operated as an annulment of the designation of the beneficiary named

in the policy, and that in the absence of a new designation, the widow of deceased, Ida F. Snyder, was entitled to the fund, and not complainant. Furthermore, that deceased had impaired his health by the excessive use of morphine, which avoided the policy, and that confessedly, he had committed suicide (Answer Rec. pp. 4 to 5).

The Chancery Court rendered a decree in favor of complainant, for $3,000.00 and interest. The court also found that the defense was not made in good faith, and onerated defendant with the "added liability" of $750.00 under Tennessee Act of 1901 (Decree Rec. pp. 41 and 42).

Defendant begs to say here, in parentheses, that not only was the defense made in good faith, but that it was a conclusive defense, entitling defendant to a decree in its favor. The decree was based on a misapplication of the doctrine of estoppel, and would be reversed by this Honorable Court, if the court had jurisdiction of that question. But defendant is advised, that this court will consider solely the federal question involved, and having adjudicated that question, will not examine as to the correctness of any other part of the decree, wherefore defendant will not further discuss the decree, except as to the federal question.

The Act of Tennessee of 1901, Chapter 141, under which the court assessed the "additional liability" is as follows:

"CHAPTER 141.

Senate Bill No. 117.

An Act to impose additional liability upon insurance companies and other corporations, firms or persons, for failure to promptly pay insurance losses and a liability upon policy holders where suits are not brought in good faith.

Section 1. *Be it enacted by the General Assembly of the State of Tennessee,* That the several insurance companies of this State, and foreign insurance companies and other corporations, firms or persons doing an insurance business in this State, in all cases when a loss occurs and they refuse to pay the same within sixty days after a demand shall have been made by the holder of said policy on which said loss occurred, shall be liable to pay the holder of said policy, in addition to the loss and interest thereon, a sum not exceeding twenty-five per cent on the liability for said loss; Provided, that it shall be made to appear to the court or jury trying the case, that the refusal to pay said loss was not in good faith, and that such failure to pay inflicted additional expense, loss or injury upon the holder of said policy; and provided, further that such additional liability within the limit prescribed shall, in the discretion of the court or jury trying the case, be measured by the additional expense, loss and injury thus entailed.

Sec. 2. *Be it further enacted,* That in the event it shall be made to appear to the court or jury trying the cause that the action of said policy holder in bringing said suit was not in good faith, and recovery under said policy shall not be had,

said policy holder shall be liable to such insurance companies, corporations, firms or persons in a sum not exceeding twenty-five per cent of the amount of the loss claimed under said policy; Provided, that such liability, within the limits prescribed shall, in the discretion of the court or jury trying the cause, be measured by the additional expense, loss or injury inflicted upon said insurance companies, corporations, firms or persons by reason of said suit.

Sec. 3. *Be it further enacted*, That all Acts and parts of Acts in conflict with this Act be and the same are hereby repealed, and that this Act take effect from and after its passage, the public welfare requiring it.

Passed April 16th, 1901.

Newton H. White,
Speaker of the Senate.
E. B. Wilson,
Speaker of the House of Representatives.
Benton McMillan, Governor."

Defendant appealed from the decree above set out, and assigned errors as follows:

3. The decree is erroneous in holding that a divorced wife can be a beneficiary as the Constitution and By-laws provide to the contrary.

4. In holding the defendant Ruling estopped to make this question, because Mrs. Snyder was misled by the letter of defendant's Supreme Ruler. No such effect can be given to that letter. It is not an estoppel at all, but if it were, it could only be such as to the loss she

had sustained in paying assessments, and this we have tendered back to her, which is the utmost relief she could claim.

5. There was an error in applying the Penalty Act, of 1901, to this case and adding twenty-five per cent to her recovery. The defense is not only in good faith, but we think it manifestly a good defense. The Act, first, has no application to a defense of this kind, and in this case, and second, whether it does or not, is unconstitutional and void.

The contract between this defendant and C. C. Snyder was made in 1887. The Act was passed in 1901, "to impose an additional liability" on this Company or Ruling. It impairs the obligation of their contract and is void. Const. U. S. Art. 1, Sec. 10.

(Assignment of Errors, Rec. pp. 49 and 45.)

The Supreme Court of Tennessee affirmed the decree, delivering an opinion through Mr. Chief Justice Beard (Record pp. 48 to 56). The concluding paragraph of this opinion is as follows (Rec. p. 56):

> "The chancellor not only gave the complainant a decree for the amount of the certificate and interest, but allowed her, in addition thereto, twenty-five per cent thereon, under Chapter 141, Acts of 1901. It is insisted that this Act in imposing this additional liability on the defendant is void, in that it impaired the obligation of the contract in question. This question has been presented and determined against this insistence in both published and unpublished opinions. We are entirely satisfied with the holding heretofore made. In all respects the decree of the chancellor is affirmed."

The decree entered by the Supreme Court of Tennessee was for $4,016.65, including $750.00 for added liability with interest thereon (Rec. p. 57). Upon motion of defendant the following order was passed (Record p. 58):

Order.

"The decree heretofore on a former day of the term affirming decree of the Chancellor is modified so as to show that said judgment to the extent of the 25 per cent penalty, amounting to $750.00, was allowed and affirmed under the provisions of Chapter 141, of the Acts of the Legislature of 1901, and the court holds and especially adjudges that said Act is constitutional and does not violate the Constitution of the State or of the United States, especially Article I, Section 20 and Article II, Section 2 of the Constitution of the State, and Art. I, Section 10, of the Constitution of the United States and said Act does not impair the obligation of contract."

Defendant presented the record to this Honorable Court, with a petition for writ of error, which was allowed by Mr. Justice Harlan (Rec. 64).

ASSIGNMENT OF ERROR.

The Supreme Court of Tennessee erred in not dismissing the bill herein so far as it prayed for the assessment of added liability, and in onerating plaintiff in error with $750.00 and interest, as added liability for the reason that such added liability as applied to plaintiff in error in this case, was and is, in violation of Article I, Section 10, of the Constitution of the United States, in that it impaired the obligation of the contract subsisting at the time the statute of Tennessee providing for the added liability was passed.

BRIEF OF APPELLANT.

The contract involved here was entered into in 1887. In 1901, the State of Tennessee passed an Act imposing an "added liability" up to 25 per cent on contracts of this nature on which suit is defended unsuccessfully. The State had no power to pass a law affecting pre-existing contracts under Article I, Section 10, of the Constitution of the United States. Hence the Act was invalid as to the contract involved here.

Bedford v. *Eastern B. & L. Ass'n.*, 181 U. S. 227.

This question has been before the court repeatedly on attacks based on the "due process of law" and "the equal protection of the law" clauses of the Fourteenth Amendment. Such cases are no precedent here. Nor can the same reasoning be applied. Many of these cases arose out of tort and not out of contract.

R. R. v. *Ellis*, 165 U. S. 150.
Atchison, etc., R. R. Co. v. *Matthews*, 174 U. S. 96.

In all cases upheld against attack based on the Fourteenth Amendment it appeared that the statute was in existence at the time the contract was made. Hence the statute was impliedly written into the contract, and that was the paramount reason why the statute was upheld.

Mutual Life Ass'n. v. *Mettler*, 185 U. S. 308.
Orient Ins. Co. v. *Daggs*, 172 U. S. 557.

St. Louis, etc., R. R. v. *Paul.*, 173 U. S. 409.
John Hancock Ins. Co. v. *Warren,* 181 U. S. 73.
New York Life v. *Craven,* 187 U. S. 389.
Iowa Life v. *Lewis,* 187 U. S. 344.
Farmers Ins. Co. v. *Dabney,* 189 U. S. 301.

In the case at bar, there was no statute imposing added liability to be written into the contract, but only the constitutional provision of Tennessee that the court should be open to every man without sale, denial or delay.

Nor is compelling the payment of debts a police regulation.

Atchison, etc., R. R. v. *Matthews,* 174 U. S. 96.

Hence the statute of Tennessee, if applied to the case at bar, could not be sustained under the Fourteenth Amendment.

When the statute of 1901 was passed, adding $750.00 to the obligation of the contract, defendant had a right to withdraw from the state and refuse to make new contracts. But it could not withdraw from contracts then in existence. As to these contracts, the imposition of added liability was an impairment of the contract.

Bedford v. *Eastern B. & L. Ass'n.,* 181 U. S. 227.

Defendant does not claim a vested right in any particular remedy or mode of procedure, but a right to an existing defense is property in the sense that it is incompetent for the Legislature to take it away.

Pritchard v. *Norton,* 106 U. S. 124.

If the Legislature can arbitrarily add twenty-five per cent to the obligation of an existing contract at what point must it stop? It may, under the same authority, add five hundred per cent.

Barnitz v. *Beverly*, 163 U. S. 118.

The power to tax involves the power to destroy. The power to modify at discretion the remedial part of a contract is the same thing.

Edwards v. *Kearzey*, 96 U. S. 595.

Defendant does not deny that the Legislature may change remedies. "Whatever belongs merely to the remedy may be altered according to the will of the State, provided the alteration does not impair the obligation of the contract. But if that is produced, it is immaterial whether it is done by acting on the remedy, or directly on the contract itself. In either case, it is prohibited by the Constitution." Chief Justice Taney in *Bronzon* v. *Kinzie*, 42 U. S. 311.

McCracken v. *Haywood*, 2 Howard 608.
Howard v. *Bugbee*, 65 U. S. 461.
Brine v. *Hartford F. Ins. Co.*, 96 U. S. 627.
Shapley v. *San Angelo*, 167 U. S. 657.
Edward v. *Kearzey*, 96 U. S. 595.
Seibert v. *Lewis*, 122 U. S. 284.
Re City Bank of New Orleans, 3 How. 272.

Among the multitude of state cases supporting this principle, we refer to:

Commoner's Court v. *Rather*, 48 Ala. 447.
County Com. Court v. *King*, 13 Fla. 476.
Robinson v. *Magee*, 9 Cal. 85.

Wilder v. *Lumpkin*, 4 Ga. 220.
Temple v. *Hays*,—Morris 12.
Long v. *Walker*, 105 N. C. 98.
State v. *McPeak*, 31 Neb. 143.
Foltz v. *Huntley*, 7 Wend. 216.
Bank of Dom. v. *McVeigh*, 20 Gratt. 466.
Roberts v. *Cocke*, 28 Gratt. 215.
Mundy v. *Monroe*, 1 Mich. 71.
Swinburne v. *Mills*, 17 Wash. 619.
Goggans v. *Turnipseed*, 1 S. C. 82.
Jacoway v. *Denton*, 25 Ark. 641.
Homestead Cases, 22 Gratt. 287.

The fact that the act tends to enfore the contract is immaterial if thereby the contract is impaired. Both parties have fixed rights under a contract, and the rights of neither party can be impaired.

McCracken v. *Haywood*, 2 How. 608.
Bedford v. *Eastern B. & L. Ass'n.*, 181 U. S. 227.
Wade on Retroactive Laws, Sec. 115.

It is one of the highest duties of the Supreme Court to take care that the constitutional prohibition against states impairing the obligations of contracts shall neither be evaded nor frittered away.

Murray v. *Charleston*, 96 U. S. 432.
New Orleans Waterworks Co. v. *LaSugar Refining Co.*, 125 U. S. 31.
Spencer v. *Merchant*, 125 U. S. 352.

A law given a retroactive effect is unconstitutional if it so changes the existing remedies as materially to impair the rights and interests of a party to a contract.

Re City Bank of New Orleans, 3 How. 292.
Auffm' Ortt v. *Rasin*, 102 U. S. 620.

The court will look beyond the wording of a statute, apparently fair upon its face, and consider the effect. The result of the present statute is that all insurance companies who defend a suit unsuccessfully are mulcted, while plaintiff is not.

Yick Wo v. *Hopkins,* 118 U. S. 356.

An additional remedy can be given only where it does not impair any substantial right of the other party.

New Orleans, etc. R. R. v. *La.,* 157 U. S. 219.

ARGUMENT.

The contention of this defendant is that "Added liability" imposed by Tennessee Statute in 1901 cannot be applied to a contract entered into twelve years before the statute was passed, because it would impair the obligation of the contract. The opinion of the Supreme Court of Tennessee says (pg. 65 or Rec.):

> "This question has been presented and determined against this insistence in both published and unpublished opinions."

We answer that diligent search has failed to disclose a single case involving the exact question. It is true that both State and Federal Courts have in many instances examined the constitutionality of added costs or attorneys' fees by way of penalty under the "due process of law" and "the equal protection of the laws" clauses of the Fourteenth Amendment of the Constitution of the United States. But these decisions do not affect the present question, because a majority of the cases arose out of tort, and, where a contract was the basis of the suit, it appeared invariably that the statute attacked antedated the contract. Nor can it be said that the question is settled as raised under the Fourteenth Amendment. Indeed, the weight of authority seems to be against the constitutionality of statutes of this description.

In the leading case of *Gulf, etc. R. R. Co.* v. *Ellis*, 165 U. S. 150, 41 L. E. 666, the assessment of attorneys' fees against a railroad is condemned, as denying the equal protection of the laws. Many cases are cited to support the decision, three of the justices dissenting.

While upholding the principle of the Ellis case, a distinction is made in *Atchison, etc., R. R. Co.* v. *Matthews*, 174 U. S. 96, 43 L. E. 909. The court adheres to the view that:

> "There is no good reason why railroad corporations alone should be punished for not paying their debts. Compelling the payment of debts is not a police regulation."

But, says the court, to distinguish the cases:

> "The purpose of this statute is not to compel the payment of debts, but to secure the utmost care on the part of the railroad companies to prevent the escape of fire from moving trains."

Four of the justices, Messrs. Harlan, Brown, Peckham and McKenna, dissent and adhere to the Ellis case.

Applying that case to the case at bar, it would appear that, because the object of the present statute is to compel payment of debts, it would fall under the decision of the Ellis case and that the statute is unconstitutional under the Fourteenth Amendment.

Next we have the case of *Fidelity Mutual Life Ass.* v. *Mettler*, 185 U. S. 308, 46 L. E. 922, the first case where the principle was applied to an insurance con-

tract. The Texas statute assessed a penalty of twelve per cent against a life insurance company failing to pay promptly. The contention was made that the statute violated the equal protection of the law clause, because it applied only to a certain class of insurance companies. The statute was upheld principally upon the ground that defendant was a foreign corporation which came to Texas with knowledge of existing laws, and that by accepting the permission to do business in that state, it agreed to all the laws of the state. The court holds that "the statute formed a part of every contract of the defendant made in the state." Mr. Justice Brewer concurred in the result and Messrs. Harlan and Brown enter a most vigorous dissent, in which it is said in answer to the question whether this statute violates the Fourteenth Amendment:

> "It seems to me that this question must be answered in the affirmative if any regard whatever be had to the principles announced in *Gulf, etc., v. Ellis.*"

Manifestly the foregoing case is no precedent for the case at bar, because the statute of Texas was passed in 1874, and codified in 1895, while the policy was issued in October, 1896. It may likewise be pointed out that the court in speaking of classification found it proper to apply a different rule to lodges and associations of mutual benefit or benevolent character, to which latter class the present defendant belongs.

In the foregoing case, the court cites *Orient Ins. Co. v. Daggs*, 172 U. S. 557, 43 L. E. 552, involving

a Missouri statute which provided that a fire insurance company should be bound by the value of the insured property as given in the policy. In upholding the statute the court emphasized that it operated solely upon future contracts.

The same stress was laid upon the prospective operation of the statute in *St. Louis, etc., R. R.* v. *Paul*, 173 U. S. 409, 43 L. E. 746, involving the validity of the Arkansas statute requiring railroads to pay their employees immediately after discharge.

Again, in *John Hancock Ins. Co.* v. *Warren*, 181 U. S. 73, 45 L. E. 755, involving the statute of Ohio destroying the effect of warranties in policies, the decision was based upon the ground that the statute was in existence when the insurance contract was made, and therefore, was to all intents and purposes, written into the policy.

To the same effect see *New York life Insurance Company* v. *Cravens*, 178 U. S. 389, 44 L. E. 1116.

The case of *Iowa Life Insurance Co.* v. *Lewis*, 187 U. S. 344, 47 L. E. 821, again involved the statute of Texas, which had been in existence upwards of twenty years at the making of the contract, but the case was reversed.

Complaint in the present case cites *Farmers, etc., Ins. Co.* v. *Dabney*, 187 U. S. 344, 47 L. E. 821, sustaining the assessment of an attorney's fee under the statute of Nebraska, attacked under the Fourteenth Amendment. This is the only case found where it does

not affirmatively appear that the statute was in existence at the time the contract was made. But, inasmuch as the loss was upon a fire policy, of short duration, this may be presumed. At any rate, no question is made in that case regarding the impairment of a contract.

In none of the cases mentioned was the court unanimous on the question of the violation of the Fourteenth Amendment. And the case at bar does not present the main reason upon which these cases were determined, to-wit, that the statute imposing the penalty was in existence at the time the contract was entered into and therefore formed part of every contract made in the state. The statute of Tennessee was not in existence at the time the present contract was made and, hence, under the repeated decisions of this court, the statute could operate only on future contracts. Nor is the reason of *Atcheson* v. *Matthews*, *supra*, present, because the purpose of the Tennessee statute is clearly to compel the payment of debts, not to prevent fires, and compelling the payment of debts is not a police regulation. Hence we are justified in insisting that, under the facts of the case the Tennessee Statute violates the Fourteenth Amendment. But certainly, in none of the cases cited, is the question raised, whether

The Statute of Tennessee Impairs the Obligation of This Particular Contract.

It is a question of first impression to which we now devote argument.

As stated, the contract was made in 1887, the statute was passed in 1901. If the defendant made a con-

tract in Chattanooga, Tennessee, in 1887, defendant was lawfully in Tennessee, at that time, nothing to the contrary appearing in the record. It made a Tennessee contract, and under the authorities cited, the laws of Tennessee, as then existing, were part of the contract as fully as if they had been written into the contract. Under these laws, as so impliedly written into the contract, the courts of Tennessee were open to defendant to defend against an action upon this contract on the same terms with every other defendant, that is, at the peril of having to pay ordinary court costs in the event that the defense should be unsuccessful. Now, the Legislature of Tennessee steps in and says in effect: If you dare to question the right of any person to demand of you payment under this contract and permit yourself to be sued, and you fail to sustain your defense, you will have to pay, in addition to the three thousand dollars mentioned in your contract, together with interest and costs, the additional liability of seven hundred and fifty dollars which you have never contracted or agreed to pay, but which we will impose nevertheless. In other words, in place of the three thousand dollars which you have agreed to pay, we will now make you pay three thousand, seven hundred and fifty dollars with interest and costs.

Can there be any question that this is making a new contract between the parties, to which neither had assented, which neither party could have foreseen when the contract was made, and that the law imposing additional liability, as applied to this contract, is an impairment thereof?

When the statute of 1901 was passed, defendant company had a right to elect whether it cared to do further business in Tennessee with this additional liability imposed, and if, thereafter, it made any new insurance contracts in the state, it may well be that the new statute was written into every such new contract. But as to any old contract then in existence, defendant could not have avoided the obligation thereof by merely going out of the state. It was bound to perform the contract as made, and the contract as made did not include any additional liability in case of defense in court. The contract, by this statute was changed so as to give complainant seven hundred and fifty dollars more than the contract called for, without the consent of defendant obtained in any way, and in violation of the pre-existing right to defend in court without added liability.

And this in the face of the Constitution of Tennessee, Article 1, Section 17, providing:

> "That all courts shall be open and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."

It may be true that a right to a particular remedy is not a vested right, and that there is no vested right in a particular mode of procedure, but a vested right of action, or a vested right to an existing defense, are property in the sense that it is incompetent for the Legislature to take them away.

Pritchard v. *Norton*, 106 U. S. 124, 27 L. E. 107.

In *Barnitz* v. *Beverly*, 163 U. S. 118, 41 L. E. 99, involving a change of law relating to the enforcement of mortgages, the court says, speaking through Mr. Justice Shiras:

> "If such rights may be added to the original contract by subsequent legislation, it would be difficult to say at what point they must stop."

So we say here, if the Legislature of Tennessee had a right to add twenty-five per cent to the original contract, it had a right to add fifty per cent, one hundred per cent or five hundred per cent, and it could still be insisted that this was no impairment of the contract.

In the foregoing case, the court cites *Bronson* v. *Kinzie*, 42 U. S. 311, 11 L. E. 143, where Chief Justice Taney says:

> "Whatever belongs merely to the remedy may be altered according to the will of the state, provided the alteration does not impair the obligation of the contract. But if that effect is produced, it is immaterial whether it is done by acting on the remedy or directly on the contract itself. In either case, it is prohibited by the Constitution."

Again in the same case, the court refers to *McCracken* v. *Haywood*, 2 Howard 608, 11 L. E. 399, where it is said:

> "In placing the obligation of contracts under the protection of the constitution, the framers looked to the essentials of the contract more than to the forms and modes of proceeding by which

it is to be carried into execution; annulling all state legislation which impaired the obligation, it was left to the state to prescribe and shape the remedy to enforce it. The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and forming a part of them as the measure of the obligation to perform them by the one party, and the right acquired by the other. There can be no other standard by which to ascertain the extent of either, than that which the terms of the contract indicate, according to their settled legal meaning. When it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force. If any subsequent law affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract, in favor of one party, to the injury of the other; hence any law, which in its operation, amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the constitution."

Howard v. *Bugbee*, 65 U. S. 461, 16 L. E. 753.

Brine v. *Hartford F. Ins. Co.*, 96 U. S. 627, 24 L. E. 858.

Shapleigh v. *San Angelo*, 167 U. S. 657, 42 L. E. 314.

Edwards v. *Kearzey*, 96 U. S. 595, 24 L. E. 793.

In the last named case, involving a change of exemption laws, the court says:

> "The power to tax involves the power to destroy. *McCallough* v. *Md.*, 4 Wheat 416. The power to modify at discretion the remedial part of a contract is the same thing."

In *Murray* v. *Charleston*, 96 U. S. 432, 24 L. E. 760, Mr. Justice Strong says:

> "It is one of the highest duties of the Supreme Court to take care that the constitutional prohibition against states impairing the obligation of contracts shall neither be evaded nor frittered away."
>
> *New Orleans Waterworks Co.* v. *Louisiana Sugar Ref. Co.*, 125 U. S. 31, 31 L. E. 612.
>
> *Spencer* v. *Merchant*, 125 U. S. 352, 31 L. E. 766.

The main question now before th court is definitely settled in *Bedford* v. *Eastern B. a...! L. Ass'n.*, 181 U. S. 227, 45 L. E. 834. In that case Bedford, a resident of Tennessee, had applied to become a shareholder in complainant building and loan association of Syracuse, which application was accepted and the stock issued February 2, 1891; this entitled Bedford to a loan on certain conditions. On March 20, 1891, he presented his application for a loan. On March 26, 1891, the Legislature of Tennessee passed an act regulating the admission into the state of foreign corporations and more especially of foreign building and loan associations.

Complainant building and loan association never complied with this statute. On May 12, 1891, the loan was granted and a mortgage taken from Bedford. Thereafter Bedford failed to make the payments contracted for, and then resisted the attempt to foreclose the mortgage upon the ground that the contract was not authorized by the laws of Tennessee on account of noncompliance with the Tennessee law governing foreign building and loan associations, and for this reason, could not be enforced. Says the court, speaking through Mr. Justice McKenna:

> "The question is, did the subscription to the stock of the association, its issuance and the application for a loan in pursuance of it, constitute a contract which was inviolable by the State Legislature? We think the answer should be in the affirmative. By his subscription to the stock of the association Bedford became a member of the association, bound to the performance of what its by-laws and charter required of him, and entitled to exact the performance of what its by-laws and charter required of the association. Each acquired a right to what the other promised, and there were all the elements of a contract. We are compelled to disagree with the views presented by the Supreme Court of Tennessee, etc."

In the case at bar, the parties to the contract agreed to do certain things, no more and no less on either side. Each acquired a right to what the other promised, and no after-enacted law of Tennessee could affect the contract.

As the court says in the foregoing case, the defendant herein might justly have declined to do business in the state under the condition imposed by the Act of 1901. It might have retired from the state, and from all it had the option to retire from. But it could not retire from the execution of its contracts then in existence. * * * The state could not affect that obligation nor impair it. The obligation of the contract is the law which binds to perform their agreement.

> "We recognize the power of the state to impose conditions upon foreign corporations doing business in the state. We have affirmed the existence of that power many times, but manifestly it cannot be exercised to discharge the citizens of the state from their contract obligations."

In *Seibert* v. *Lewis*, 122 U. S. 284, 294, 30 L. E. 116, the Supreme Court, speaking through Mr. Justice Matthews, says:

> "It is well settled by the decisions of this court, that the remedy subsisting in a state when and where the contract is made and is to be performed, is a part of its obligation, and any subsequent law of the state which so affects that remedy as substantially to lessen the value of the contract is forbidden by the constitution, and is therefore void."

A law given a retroactive effect is unconstitutional if it so changes the existing remedies as materially to impair the rights and interests of a party to a contract.

Re City Bank of New Orleans, 3 How. 292, 11 L. E. 603.

Auffm' Ordt. v. *Rasin*, 102 U. S. 620, 26 L. E. 262.

From the foregoing authorities, we insist that the statute of Tennessee, imposing additional liability upon insurance companies, if applied to a pre-existing contract, is an impairment of that contract and therefore void.

Replying to the Argument of Plaintiff

as found in her brief filed herein on motion to dismiss or affirm, we beg leave to notice the insistence of plaintiff, that the manifest purpose of the act is to *strengthen*, and not to *impair* the obligation of the contract. And in this connection stress is laid upon the finding of "bad faith" required by the statute, and it is argued that a delinquent insurance company which fraudulently and in bad faith refuses to pay its obligations, has no ground of complaint because it is charged with the ordinary fees and expenses of a law suit, entailed by its fraudulent conduct.

But this court will look beyond the wording of the statute and consider the effect. In *Yick Wo* v. *Hopkins*, 118 U. S. 356, 30 L. E. 220, the ordinance of San Francisco was fair upon its face, but resulting in a denial of equal justice, it was condemned.

The statute of Tennessee apparently fair upon its face, has the practical result that in every case where a defense in an insurance case is unsuccessful, the "added liability" will be imposed, because the finding of the court or jury against defendant is *prima facie* sufficient to show that the defense was not made in good faith,

thus destroying the natural and necessary presumption that a defendant who exercises his right to make defense against a demand at the peril of having to pay the ordinary court costs and his own lawyers' fee is acting in good faith.

This is well illustrated by the case at bar. Here the complainant, as a divorced wife, was absolutely barred from claiming the fund, both under the laws of the defendant association and under the laws of Tennessee. The decree rendered imposes double liability upon defendant, because unquestionably, the second wife is entitled to the fund, and if she sues in Tennessee, defendant will no doubt be onerated with another seven hundred and fifty dollar liability. The decree rests upon the utterly erroneous application of the doctrine of estoppel, holding that the acts of a third party, having no vested interest in a contract, may change the contract between the two parties who made it. In addition to that, there was strong proof that the assured was a confirmed morphine fiend, and his habits in this regard directly led to his suicide, by which he cut off the life-expectancy upon which the insurance contract was based. Not alone was the defense made in good faith, but defendant was entitled to have the bill dismissed in its favor, and nothing but total disregard of well established legal principles defeated that result. Yet the learned trial court added the extreme amount of liability permitted by the statute and the Honorable Supreme Court sustained the decree.

We repeat that if the state had the right to add

twenty-five per cent to the obligation of a pre-existing contract, it had a right to add one hundred per cent or five hundred per cent to the amount due and it would still be within the constitutional provision against impairment of contracts, because it merely changed the remedy.

Barritz v. *Beverly*, 106 U. S. 124.

Nor is the contention that the statute strengthens the obligation of any force. There are always two parties to the contract and each party has rights which cannot be impaired.

> "Impairment of the obligation of a contract may be either by discharging one of the parties from the fulfillment of its terms, or it may be by adding to the burdens imposed upon the obligor, and making its conditions more favorable to the obligee."
>
> Wade on Retroactive Laws, Section 115.

In *McCracken* v. *Haywood*, 2 Howard 608, there is a clear recognition of the mutual obligation. "The laws," says the court, "are necessarily referred to in all contracts, and form a part of them as the measure of the obligation to perform them by the one party, and the rights acquired by the other. * * * When it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force."

And the court concludes that any changing of the rights or duties, though professing to act only on the remedy, is directly obnoxious to the constitution.

In *Bedford* v. *Eastern B. and L. Ass'n.*, 181 U. S. 227, this court, overruling the Supreme Court of Tennessee on the same point involved here, says:

> "Each (of the contracting parties) acquired a right to what the other promised."

Some stress is laid in the brief of the complainant upon the provision of the statute that either party is affected equally and that a complainant who brings a suit in bad faith must likewise "pay the piper." From the writer's experience as a trial lawyer, he is ready to assert that there never will be a case where court or jury will assess "added liability" to a complainant who sues a foreign insurance company, however barefaced the attempt may be. But, assuming the possibility of a plaintiff being mulcted in that manner on a pre-existing contract, is it not evident that he could and would successfully claim that his right to bring suit without "added liability" in pursuance of his pre-existing contract was impaired? If so, the right is impaired against the defendant.

It is further insisted that, unless defendant has a vested right to act dishonestly and in bad faith, it cannot be maintained that the act has deprived him of a vested right.

This argument begs the question. It presupposes that every defendant is dishonest in making a defense, where the opposite presumption is natural and necessary to a well ordered administration of the law. And the argument is reduced to an absurdity when applied to the facts in the case at bar.

The case of *Curtis* v. *Whitney*, 13 Wall 65, 20 L. E. 513, has no application here. The Legislature had passed an act requiring a purchaser under a tax sale to give the occupant of the land notice, before he could apply for his deed. Held, that this was a proper and human exercise of legislative power, that it deprived the purchaser of no right and was, therefore, no impairment of a contract.

Satterlee v. *Matthewson*, 2 Peters, 380, falls in the same category. Mrs. Matthewson, a resident of Connecticut, was the owner of land in Pennsylvania under a Connecticut title and leased the land to Satterlee, who thereafter claimed the land as his own. On suit in ejectment, the State Supreme Court held that the relationship of landlord and tenant could not exist between persons holding under a Connecticut title. This defect of the law was remedied by legislation, whereupon Mrs. Matthewson recovered her property, and was sustained by the court of last resort. This case is authority and is cited in a multitude of cases involving statutes curing defective acknowledgments, defective bond issues, defective charters, etc., and has no application to the case at bar.

It is hardly necessary to discuss the great case of *Sturgis* v. *Crowninshield*, 4 Wheat 118. The insolvency act of New York was declared unconstitutional as impairing the obligation of contracts, but the abolishment of imprisonment for debt was approved, because it was not part of the contract, and as is said in subsequent cases, it merely removed a blot upon our civilization. The court in that case makes a distinction between the

obligation of a contract and the remedy. The remedy may be changed at the discretion of the Legislature, provided the change does not impair the obligation. Among the many cases where a change of remedy has been held unconstitutional, we cite:

Commissioners Court v. *Rather*, 48 Ala. 447, holding that municipal bonds cannot be impaired by laws postponing the date of redemption; *County Commissioners* v. *King*, 13 Fla. 476, holding void a law limiting taxes to an amount insufficient to meet such bonds; *Robinson* v. *Magee*, 9 Cal. 85, 70 Am. Dec. 641, denying the power of the Legislature to enact that county warrants not presented before a certain day shall be void; *Wilder* v. *Lumpkin*, 4 Ga. 220, denying the retroactive operation of a law providing that sureties upon appeal and injunction bonds need not be made parties to writs of error; *Temple* v. *Hays*, Morris 12, of a law providing that fraud may be set up against a note in the hands of an innocent purchaser; *Long* v. *Walker*, 105 N. C. 98, 10 S. E. 859, of a repealing statute, providing that prevailing parties in actions on contract shall not recover costs; *State* v. *McPeak*, 31 Neb. 143, 47 N. W. 692, of a statute repealing a law which provided that lessees should have power to choose one of the appraisers to value the property at the expiration of the lease; *Foltz* v. *Huntley*, 7 Wend. 216, of law disannuling covenants in a lease; *Bank of Dominion* v. *McVeigh*, 20 Gratt. 466, of a law authorizing the satisfaction of debts in Confederate currency; *Roberts* v. *Cocke*, 28 Gratt. 215, of a statute conferring upon courts the power to remit in-

terest upon contracts; *Mundy* v. *Monroe*, 1 Mich. 71, 76, of a law prohibiting an action of ejectment by a mortgagee until after foreclosure; *Swinburne* v. *Mills*, 17 Wash. 619, 61 Am. St. Rep. 938, 50 Pac. 491, of a statute repealing a law which provided for immediate sale of mortgaged land, upon default of a mortgagor; *Goggans* v. *Turnipseed*, 1 S. C. 82, 98 Am. Dec. 398, of a law providing that debts due upon open accounts shall bear interest. State Constitutions have also been held to be subject to the rule thus limited, and when such Constitutions, while purporting to modify a remedy, in fact impair the obligation of existing contracts, they are repugnant to the Federal Constitution and void. *Jacoway* v. *Denton*, 25 Ark. 641; Homestead Cases, 22 Gratt. 287, 288, 12 Am. Rep. 514, 515.

In *Antoni* v. *Greenhow*, 17 Otto 769, the fact that a state is not sueable entered largely into the decision, but the court held that the change of the Virginia law relating to bonds being receivable for taxes left ample remedy for the enforcement of the payment of the coupons, and was therefore not an impairment of the State contract.

We submit that if the bondholder had been onerated with added liability to the extent of twenty-five per cent the result would have been different.

Defendant is not complaining of any additional remedy given to complainant, but it objects that the statute arbitrarily adds a liability of twenty-five per cent to the pre-existing contract, which is an entirely different matter, though it is disguised as a remedy.

Sampeyreac v. *United States*, 7 Pet. 222, 8 L. E. 665, involved a bill of review to annul a former decree upon the ground that it had been obtained by forgery, perjury and fraud, and the court so found. It would appear that such a bill would have been entertained under any equity jurisdiction, irrespective of the extension of jurisdiction complained of.

The case of *New Orleans, etc., R. R.* v. *Louisiana*, 157 U. S. 219, 39 L. E. 679, upon which complainant relies, is an authority directly in favor of defendant if construed correctly. The State had passed an act that railroads who were contractually bound to maintain streets, culverts, bridges, etc., and failed to do so, might be compelled by mandamus to do so. The court found that failure on the part of the railroad to comply with its contract might seriously imperil the interest of an entire community, and that an action at law might be inadequate. As to the effect of the act, the court says:

> "It does not enlarge the obligation assumed by the defaulting corporation, nor impose new burdens upon such corporation."

Under such conditions it is held that the State may give an additional remedy, "provided always, that the new remedy is consistent with the nature of the obligation to be enforced, and *does not impair any substantial right given by the contract.*" Summing up, the court says:

> "We hold that such a law, simply giving an additional remedy to the party entitled to performance, *without impairing any substantial right of the other party*, does not impair the obligation of the contract sought to be enforced."

Manifestly, if the new remedy did impair any substantial right of the other party, by forcing it to respond to added liability, not mentioned in the contract, the law would have been condemned.

Complainant has cited copiously from *League* v. *Texas*, 184 U. S. 156, and, by italicising isolated expressions contained in the opinion, complainant has attempted to torture the case into an authority for the present case. But the two cases have nothing in common.

In that case, certain proceedings for the collection of taxes were attacked, but not under the impairment clause, but under the due process of law clause. If complainant had used the sentence of the opinion immediately preceding the part cited, it would have shown that the case involved no question such as is presented here. That sentence is:

> "The case, therefore, presented is one of a party admitting that valid taxes have not been paid, who is contesting the manner in which the state shall collect them, and insisting that the only method which it can adopt for such collection is one which has hitherto proved ineffectual."

Then follows what complainant cites in his brief, and who will doubt that what the court said was right as applied to such a case, but it cannot be applied to the present case.

In addition to that, the record showed that the state had purchased the property in prior sales and had a perfect title to it, and that the proceedings instituted were merely for the object of permitting complainant

to get the title back from the state. The decision is rested on the principle that the state having a perfect title to the property, might impose any condition it desired before it released the property to complainant.

Complainant relies upon a number of state courts. It seems to the writer that the decision of a state court is of little weight in deciding the question now presented, because the adverse decision of the highest court of the state is indispensable to this court taking jurisdiction. If the decisions of the State Court have any binding or even persuasive force, then we might have dismissed our contention long ago, because the Supreme Court of Tennessee has decided the case against this defendant and in favor of complainant. Nevertheless, this Honorable Court will reverse the State Court, if it finds defendant's contentions justified under the Constitution.

The case of *American Fire Insurance Co.* v. *Landfare,* 56 Neb. 482, especially relied upon by complainant, does hold as complainant says it does, but no point was made there on the impairment of a contract. All the court says is:

> "The fact that this policy in suit was issued before the act was adopted allowing attorneys' fees in actions like the present, is immaterial. The statute in question authorizing the recovery of such fees applies to all policies whether written before or subsequent to the time the act became operative. This was expressly held in *Hanover Fire Ins. Co.* v. *Gustin,* 48 Neb. 828."

Turning to the last mentioned case, it appears that the attorney's fee was assessed under Chapter 48, Acts of 1889, the second section of which provided expressly that the act should apply to all policies written or renewed before the act went into effect. But the contention made in that case was not as to the validity of an after enacted law, but upon the point whether the statute applied to a policy where the loss was not total. The court, construing the whole act together, held that it did, and the question of impairment of contract was never raised or decided in that case, nor in any other Nebraska case.

Complainant refers to *Farmers, etc.* v. *Dobney*, 189 U. S. 301, as upholding the very statute mentioned in the foregoing case. But in that case the attack made was distinctly under the equality clause of the Fourteenth Amendment, and could not have been made under the "Impairment" clause of the Constitution, because the act was passed in 1889 and was before the State Supreme Court in June, 1894. (The United States Supreme Court mentions the Act of 1899, a compilation of the statutes having been made in 1899.) The Dobney case came up before the United States Supreme Court in 1903, and that court refers to state cases where clearly the policies had been issued after 1889, so that the impairment clause could not have figured in the case. Certainly no mention of it is made in the case.

Chamberlain v. *Ins. Co.*, 55 N. H. 249, involved no question such as is involved here, and was decided distinctly upon the proposition that existing laws enter into all contracts of insurance.

In *Woodward* v. *Winchill*, 14 Wash. 394, the Supreme Court of that state applied the penalty for unlawfully holding over after notice to quit to a lease entered into before the passage of the statute. The nature of the penalty is not disclosed. But the court bases its decision on the ground that an unlawful holding over is not connected with the lease, but is a separate matter regarding which the Legislature might enact laws which do not impair the lease. The court admits, "That legislation may so change the remedy incident to a contract as to make such change unconstitutional when applied to those contracts executed before its passage." * * * But, "It is only when such remedy is so interwoven with a substantial right flowing from the contract that any change therein will substantially affect the value of the contract, so that rights thereunder will be impaired within the meaning of the provision in the Constitution of the United States and of the state, which prohibits the Legislature from impairing the obligation of contracts." The court then holds that the case considered is not such a case. All else in the case is *obiter dictum*.

In *Bryson* v. *McCreary*, 106 Ind. 1, the court of that state expressly holds that laws operating upon the remedy may be unconstitutional, citing Cooley's Const. Lim. pp. 285, 292, but that in the case then considered, there was no material change in the remedy producing such a result.

Blann v. *State*, 39 Ala. 353, involved an indictment for knowingly suffering a bridge to remain out of re-

pair. It is sufficient to say that the case only remotely affects the case at bar. The same remark may be made as to *Parpley* v. *Hamer*, 17 Miss. 310. And this is certainly so with regard to *Scott* v. *District Court*, 15 N. Dak. 259, where no question involved in the present case is decided. The case of *Heineman* v. *Schloss*, 83 Mich. 153, involved the pursuance of property fraudulently conveyed, and has no possible application to the case at bar. *Boubaker* v. *Poage*, 1 T. B. Monroe (Ky.) 123, could not be found, but from the extract it would appear that it involves the same question treated in *Woodward* v. *Winchill* (*supra*).

In *County of Kossuth* v. *Wallace*, 60 Iowa 508, the question involved was whether an attorney's fee for foreclosing a school fund mortgage could be reduced from fifty-two dollars to twenty-five dollars, by a statute enacted after the mortgage was made, but before it was foreclosed. It was held that "a law merely limiting the costs recoverable does not so affect the remedy as substantially to defeat the rights of the creditors."

In *Dowell* v. *The Talbott Paving Company*, 138 Ind. 675, the state had passed a front foot improvement law giving the city a lien on abutting property, authorizing foreclosure of the lien and providing for an attorney's fee. Under this law, street improvement work was done. Thereafter, an amendatory act was passed authorizing the contractor to foreclose the lien, coupled with attorney's fees. The contractor brought foreclosure suit. Held that the extension of the city's remedy to the con-

tractor did not create any new right, nor did it impose any new burden on the abutting property.

Mobile, Etc. R. R. v. *Steiner,* 61 Ala. 559, involved a penalty assessed by statute upon a railroad for violation of rate laws. Among many reasons given why this penalty was not unconstitutional, the court says, that the statute imposing a penalty at the same time extended certain benefits to the railroad in increased rates; that the benefits had been accepted and that therefore the railroad could not be heard to object to any part of the statute (p. 594).

We can see not even a remote application of *Vanzant* v. *Waddell,* 2 Yer. 258, to the case at bar.

New Era Life Ass'n. v. *Musser,* 120 Pa. 384, might properly be labeled "Much ado about nothing." An assessment company had issued a policy to defendant, who had failed to pay dues to the amount of $21.63. He was sued before a justice for these dues. A few days before the policy was issued the Legislature had passed an act requiring insurance companies to attach a copy of the application to the policy and providing that, unless this was done, the application could not be received in evidence. Plaintiff had failed to comply with this act, whereupon defendant objected to the introduction of the application as evidence and was sustained. That is all there is to the case.

Defendant submits with the utmost confidence that the complainant's authorities do not meet our contention that the statute of Tennessee involves the impairment of

our contract and is therefore void. We submit that, upon reason and authority, we have shown a violation of the provision of Article 1, Section 10, of the United States Constitution. That, therefore, this Honorable Court will did dismiss the writ of error herein, but take jurisdiction and decide the controversy upon the merits.

This being done, we would suggest further that the case be remanded to the state court, so that the state court may make proper order as to the funds paid into court and costs.

Respectfully submitted,

F. ZIMMERMANN,
Solicitor for Plaintiff in Error.

SUPREME RULING OF THE FRATERNAL MYSTIC CIRCLE *v.* SNYDER.

ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

No. 34. Submitted December 16, 1912.—Decided February 24, 1913.

The State is entitled at all times to prevent the perversion of its legal machinery, and may require that it be availed of only *bona fide*.

To impose a penalty on those who unsuccessfully and not in good faith defend their liability on contracts does not violate the obligation of the contract: *Quære* whether the State could impose such a penalty as to prior contracts as a mere consequence of unsuccessful defense.

This court will not construe a state statute as including that which it expresly excludes on the ground that the statute's practical effect will be to include cases which are so excluded therefrom.

A state statute, imposing on insurance companies an additional specified proportionate amount of the policy where there has been an unsuccessful defense interposed not in good faith, is not unconstitutional as violating the contract clause of the Constitution; and so *held* as to a statute of Tennessee to that effect.

122 Tennessee, 248, affirmed.

THE facts, which involve the constitutionality under the contract clause of the Federal Constitution of a statute of Tennessee permitting the court to add certain amounts to the recovery on insurance policies where refusal to pay was not in good faith, are stated in the opinion.

Mr. F. Zimmerman for plaintiff in error:

The contract involved here was entered into in 1887. In 1901, the "added liability" act was passed. The State had no power to pass a law affecting preëxisting contracts under Art. I, § 10, of the Federal Constitution. *Bedford v. Eastern B. & L. Ass'n*, 181 U. S. 227.

This question has been before the court repeatedly on

attacks based on the "due process of law" and "the equal protection of the law" clauses of the Fourteenth Amendment. Such cases are no precedent here. Nor can the same reasoning be applied. Many of these cases arose out of tort and not out of contract. *Railroad Co.* v. *Ellis*, 165 U. S. 150; *Atchison &c. R. R. Co.* v. *Matthews*, 174 U. S. 96.

In all cases upheld against attack based on the Fourteenth Amendment it appeared that the statute was in existence at the time the contract was made. Hence the statute was impliedly written into the contract, and that was the paramount reason why the statute was upheld. *Mutual Life Ass'n* v. *Mettler*, 185 U. S. 308; *Orient Ins. Co.* v. *Daggs*, 172 U. S. 557; *St. Louis &c. R. R.* v. *Paul*, 173 U. S. 409; *John Hancock Ins. Co.* v. *Warren*, 181 U. S. 73; *New York Life* v. *Craven*, 187 U. S. 389; *Iowa Life* v. *Lewis*, 187 U. S. 344; *Farmers' Ins. Co.* v. *Dabney*, 189 U. S. 301.

In the case at bar, there was no statute imposing added liability to be written into the contract, but only the constitutional provision of Tennessee that the court should be open to every man without sale, denial or delay.

Nor is compelling the payment of debts a police regulation. *Atchison &c. R. R.* v. *Matthews*, 174 U. S. 96.

Hence the statute of Tennessee, if applied to the case at bar, could not be sustained under the Fourteenth Amendment.

When the statute of 1901 was passed, adding $750 to the obligation of the contract, defendant had a right to withdraw from the State and refuse to make new contracts. But it could not withdraw from contracts then in existence. As to these contracts, the imposition of added liability was an impairment of the contract. *Bedford* v. *Eastern B. & L. Ass'n*, 181 U. S. 227.

Defendant does not claim a vested right in any particular remedy or mode of procedure, but a right to an existing defense is property in the sense that it is incompetent for

he legislature to take it away. *Pritchard* v. *Norton*, 106 J. S. 124.

If the legislature can arbitrarily add twenty-five per ent. to the obligation of an existing contract it may, under he same authority, add five hundred per cent. *Barnitz* . *Beverly*, 163 U. S. 118.

The power to tax involves the power to destroy. The ower to modify at discretion the remedial part of a con- act is the same thing. *Edwards* v. *Kearzey*, 96 U. S. 595.

Defendant does not deny that the legislature may hange remedies. Whatever belongs merely to the remedy ay be altered according to the will of the State, provided he alteration does not impair the obligation of the con- act. But if that result is produced, it is immaterial hether it is done by acting on the remedy, or on the con- act itself. In either case, it is prohibited by the Con- itution. *Bronson* v. *Kinzie*, 1 How. 311; *McCracken* v. *laywood*, 2 How. 608; *Howard* v. *Bugbee*, 24 How. 461; *rine* v. *Hartford F. Ins. Co.*, 96 U. S. 627; *Shapley* v. *an Angelo*, 167 U. S. 657; *Edwards* v. *Kearzey*, 96 U. S. 5; *Seibert* v. *Lewis*, 122 U. S. 284; *Re City Bank of New rleans*, 3 How. 272.

Among the multitude of state cases supporting this inciple, see *Commoner's Court* v. *Rather*, 48 Alabama, 7; *County Com. Court* v. *King*, 13 Florida, 476; *Robinson* *Magee*, 9 California, 85; *Wilder* v. *Lumpkin*, 4 Georgia, 0; *Temple* v. *Hays*, Morris, 12; *Long* v. *Walker*, 105 r. Car. 98; *State* v. *McPeak*, 31 Nebraska, 143; *Foltz* v. *ntley*, 7 Wend. 216; *Bank of Dom.* v. *McVeigh*, 20 Gratt. 6; *Roberts* v. *Cocke*, 28 Gratt. 215; *Mundy* v. *Monroe*, 1 ichigan, 71; *Swinburne* v. *Mills*, 17 Washington, 619; ggans v. *Turnipseed*, 1 S. Car. 82; *Jacoway* v. *Denton*, 25 rkansas, 641; *Homestead Cases*, 22 Gratt. 287.

The fact that the act tends to enforce the contract is material if thereby the contract is impaired. Both rties have fixed rights under a contract, and the rights

of neither party can be impaired. *McCracken* v. *Hayw*
2 How. 608; *Bedford* v. *Eastern B. & L. Ass'n*, 181 U
227; Wade on Retroactive Laws, § 115.

It is one of the highest duties of the Supreme Cour
take care that the constitutional prohibition against St
impairing the obligations of contracts shall neither
evaded nor frittered away. *Murray* v. *Charleston*,
U. S. 432; *New Orleans Waterworks Co.* v. *Louisiana Su*
Refining Co., 125 U. S. 31; *Spencer* v. *Merchant*, 125 U
352.

A law given a retroactive effect is unconstitutional
so changes the existing remedies as materially to imp
the rights and interests of a party to a contract. *Re*
Bank of New Orleans, 3 How. 292; *Auffm'ordt* v. *Ra*
102 U. S. 620.

The court will look beyond the wording of a stat
apparently fair upon its face, and consider the effect.
result of the present statute is that all insurance compa
who defend a suit unsuccessfully are mulcted, while pl
tiff is not. *Yick Wo* v. *Hopkins*, 118 U. S. 356.

An additional remedy can be given only where it c
not impair any substantial right of the other party.
Orleans &c. R. R. v. *Louisiana*, 157 U. S. 219.

Mr. J. B. Sizer and *Mr. Robert Pritchard* for defend
in error.

MR. JUSTICE HUGHES delivered the opinion of the co

In 1887, the plaintiff in error issued a certificate
policy of insurance for three thousand dollars upon
life of Charles C. Snyder. His wife, the defendant
error, was the beneficiary. He died in 1908, and liabi
upon the policy having been denied by the company
suit was brought by Mrs. Snyder in the Chancery C
of Tennessee to compel payment. The court gave ju

ment in her favor and finding that the refusal to pay was not in good faith added to the recovery twenty-five per cent. of the principal, or $750, which was adjudged to be "reasonable compensation and reimbursement to the complainant" for the "additional loss, expense and injury" which had been inflicted upon her as the holder of the policy by the refusal. This addition was made pursuant to an act passed by the legislature of Tennessee in 1901 (April 18, 1901, Acts of 1901, c. 141, p. 248). The Supreme Court of the State, sustaining the statute, affirmed the judgment and the insurance company has sued out this writ of error. 122 Tennessee, 248.

The sole Federal question for decision is whether the above-mentioned statute, as applied, impaired the obligation of the contract in suit and thus violated Art. I, § 10, of the Constitution of the United States.

The act in question provides:

"SECTION 1. . . . That the several insurance companies of this State, and foreign insurance companies and other corporations, firms or persons doing an insurance business in this State, in all cases when a loss occurs and they refuse to pay the same within sixty days after a demand shall have been made by the holder of said policy on which said loss occurred, shall be liable to pay the holder of said policy, in addition to the loss and interest thereon, a sum not exceeding twenty-five per cent. on the liability for said loss; Provided, that it shall be made to appear to the Court or Jury trying the case that the refusal to pay said loss was not in good faith, and that such failure to pay inflicted additional expense, loss or injury upon the holder of said policy; and, provided, further, that such additional liability within the limit prescribed shall, in the discretion of the Court or Jury trying the case, be measured by the additional expense, loss and injury thus entailed.

"SECTION 2. . . . That in the event it shall be made

to appear to the Court or Jury trying the cause that action of said policy holder in bringing said suit was in good faith, and recovery under said policy shall be had, said policy holder shall be liable to such insur companies, corporations, firms or persons in a sum exceeding twenty-five per cent. of the amount of the claimed under said policy; Provided, that such liabi within the limits prescribed shall, in the discretion of Court or Jury trying the cause, be measured by the a tional expense, loss or injury inflicted upon said insur companies, corporations, firms or persons by reaso said suit."

The contention is that the provision for added liab placed a burden upon the assertion of the rights which contract secured and thus in effect changed the cont by allowing a recovery to which the parties had not ag and which was not sanctioned by the law as it existe the time the contract was made. *Bronson* v. *Kinz* How. 311, 317; *Barnitz* v. *Beverly*, 163 U. S. 118; *Bee* v. *Eastern Building & Loan Ass'n*, 181 U. S. 227; *Osh Water Works Co.* v. *Oshkosh*, 187 U. S. 437, 439. pointed out that in the cases in which statutes have sustained providing for the addition to the recover attorneys' fees or damages, or penalties, the question under the Fourteenth Amendment, and that, so fa they applied to suits upon contracts, the latter had made after the enactments. *Atchison, T. & S. F. R Co.* v. *Matthews*, 174 U. S. 96; *Fidelity Mutual Life A* v. *Mettler*, 185 U. S. 308, 322; *Iowa Life Insurance C Lewis*, 187 U. S. 335, 355; *Farmers' &c. Insurance C Dobney*, 189 U. S. 301, 304, 305; *Seaboard Air Line R way* v. *Seegers*, 207 U. S. 73; *Yazoo & Miss. Valley R Co.* v. *Jackson Vinegar Co.*, 226 U. S. 217.

What, then, is the effect of the statute with respe preëxisting contracts? It is at once apparent that it not purport to affect the obligation of the contrac

any way. It does not attempt to change or to render nugatory any of the terms or conditions of the policy of insurance, or to relieve the insured from compliance with any stipulation it contained. It does not seek to give a right of action where none would otherwise exist or to deprive the company of any defense it might have. If the company is not liable according to its contract, it is not required to pay. Nor does the statute permit a recovery of expenses or added damages as a mere consequence of success in the suit. The question whether the State may so provide as to prior contracts is not before us, and we express no opinion upon it.

The statute is aimed not at the rights secured by the contract but at dishonest methods employed to defeat them. The additional liability is attached to bad faith alone. This is the necessary effect of the proviso. It is only when it is "made to appear to the court or jury trying the case that the refusal to pay said loss was not in good faith" that the added recovery may be had. It must also appear that such refusal inflicted "additional expense, loss or injury" upon the policy holder, and it is this further expense, loss or injury that measures the amount to be allowed, which is not to exceed twenty-five per cent. of the liability on the policy.

It cannot be said that this effort to give indemnity for the injuries which would be sustained through perverse methods and through an abuse of the privileges accorded to honest litigants imposed a burden upon the enforcement of the contract. Neither the contract, nor the existing law which entered into it, contemplated contests promoted in bad faith or justified the infliction of loss by such means. The State was entitled at all times to take proper measures to prevent the perversion of its legal machinery, and there was no denial or burdening, in any proper sense, of the existing remedies applicable to the contract by the demand that they be availed of *bona fide*.

But we are asked to look behind the language of the statute and to assume that its effect is to impose the additional liability in the absence of bad faith. That is, we are to take the statute as including what it expressly excludes—as allowing what it explicitly denies. The act does not make the mere refusal to pay sufficient evidence of bad faith so as to justify the added recovery; it requires that the bad faith be shown and that the consequent additional loss be shown. And the state court so construed the statute in the application that was made of it in the pre. nt case.

The trial court adjudged that the refusal of the company to pay the amount of the policy was not in good faith, and the amount allowed was determined to be a reasonable compensation for the resulting damage. The evidence before the court—save a small portion of it—is not in the record. The fact must be taken to be as found. The statute, judged by its provisions as they have been construed and applied, cannot be regarded as an impairment of the obligation of the contract.

Judgment affirmed.